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REGULATIONS PURSUANT TO TITLES I, II, AND III OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.

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IN ADDITION TO DEFINITIONS, SPECIFIC PROVISIONS ARE GIVEN FOR THREE REVISED SECTIONS OF TITLE 45 OF THE CODE OF FEDERAL REGULATIONS CONCERNING TITLES I, II, AND III OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965. PART 116, "FINANCIAL ASSISTANCE TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED CHILDREN," INCLUDES ELIGIBILITY FOR AND AMOUNT OF GRANTS AND PAYMENTS, PROJECT APPLICATIONS, DUTIES AND FUNCTIONS OF STATE EDUCATIONAL AGENCIES, AND PAYMENTS. PART 117, "FINANCIAL ASSISTANCE FOR SCHOOL LIBRARY RESOURCES, TEXTBOOKS, AND OTHER INSTRUCTIONAL MATERIALS," INCLUDES STATE OR DEPARTMENT PLAN, AVAILABILITY OF TITLE II FUNDS, FISCAL PROCEDURES, STATE ADMINISTRATION, AND PAYMENT PROCEDURES. PART 118, "SUPPLEMENTARY EDUCATIONAL CENTERS AND SERVICES," INCLUDES PROJECT PROPOSALS, APPROVAL OF PROJECT PROPOSALS, FEDERAL FINANCIAL PARTICIPATION AND PAYMENT PROCEDURES, EQUIPMENT AND CONSTRUCTION, AND REVIEW PROVISIONS. THIS DOCUMENT APPEARS IN THE "FEDERAL REGISTER," VOLUME 32, NUMBER 27, PART II, FEBRUARY 9, 1967. (JK)

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PART II

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION

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Department of Health, Education, and Welfare

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Office of Education

Regulations Pursuant to Titles I, II, and III of the Elementary and Secondary Education Act of 1965

EA 001 356

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 116—FINANCIAL ASSISTANCE TO MEET THE SPECIAL EDUCATIONAL NEEDS OF EDUCATIONALLY DEPRIVED CHILDREN

Federal financial assistance made pursuant to the regulations set forth below is subject to the regulation in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare and approved by the President to effectuate the provisions of section 601 (42 U.S.C. 2000d) of the Civil Rights Act of 1964 (Public Law 88–352).

Part 116 of Title 45 of the Code of Federal Regulations is revised, primarily to reflect the amendments to Titles II and III of Public Law 874, 81st Congress, that were made by Public Law 89–750, so as to read as follows:

Subpart A—Definitions

Sec.
116.1 Definitions.

Subpart B—Eligibility for and Amount of Grants and Payments

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116.3 Determination of maximum grants and payments.
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116.45 Limitations on payments to a local educational agency.
116.46 Use of Federal funds and liquidation of obligations by State or local educational agencies.
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116.55 Inventories of equipment.
116.56 Financial interest of officials.
116.57 Copyrights and patents.

AUTHORITY: The provisions of this Part 116 issued under sec. 7, 64 Stat. 1107, as renumbered sec. 301, 79 Stat. 35; 20 U.S.C. 242. Interpret or apply secs. 201–212, 301–303, as added or renumbered by 79 Stat. 27–36, and 111(f), 80 Stat. 1196, 20 U.S.C. 241a–241l, 242–244 and 883(c).

Subpart A—Definitions

§ 116.1 Definitions.

As used in this part—

(a) "Act" means the Elementary and Secondary Education Act of 1965 (Public Law 89–10). Title II of Public Law 874, 81st Congress, which was added by Title I of said Elementary and Secondary Education Act of 1965, is hereinafter in this part referred to as Title I of the Act.

(b) "Attendance area" means, in relation to a particular public school, the geographical area in which the children who are normally served by that school reside. An attendance area for an elementary school may not necessarily be coterminous with an attendance area for a secondary school.

(c) "Average daily attendance" means (1) average daily attendance in elementary and secondary schools, not beyond grade 12, as determined in accordance with State law and (2) in the case of schools for handicapped children operated or supported by a State agency, the average number of children under 21 years of age participating per day for the length of a normal school year in an organized program in such schools of instruction which is recognized under State law as furnishing elementary or secondary education, but not beyond grade 12. Daily attendance shall be measured by the number of daily hours of participation in such instruction as the State agency determines to be appropriate for children with the particular handicap involved, except that any such instruction for more than 1 hour, but less than 3 hours, a day shall be deemed to constitute a maximum of one-half day of attendance. Time spent primarily in custodial care or in medical treatment or therapy cannot be counted in determining school attendance.

(d) "Average per pupil expenditure" in a State or in the United States means the aggregate of current expenditures (as defined in paragraph (h) of this section but otherwise without regard to the sources of funds from which such expenditures are made) of all those local educational agencies in the State, or in the United States, as the case may be, which are boards of education or other legally constituted local school authorities having administrative control and direction of free public education in a county, township, independent or other school district, including those State agencies which operate and maintain facilities for the providing of free public education in a county, township, or other school district, plus any such current expenditures made directly by the State for operation of those local educational agencies, and the sum thereof divided by the aggregate number of children in average daily attendance to whom those local educational agencies provided free public education. As used in this paragraph, "the United States" means the States of the Union and the District of Columbia.

(e) "Commissioner" means the U.S. Commissioner of Education.

(f) "Construction" means the erecting, building, acquiring, altering, remodeling, improving, or extending of school facilities, and includes the preparation of drawings and specifications for school facilities and the inspection and supervision of the construction of school facilities.

(g) "County" means a division of a State of the Union which is treated as a county by the Secretary of Commerce in compiling and reporting data regarding counties.

(h) "Current expenditures" means expenditures for free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plants, and fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay and debt service, or any expenditures made from funds granted under Titles I, II, or III of the Act.

(i) "Educationally deprived children" means those children who have need for special educational assistance in order that their level of educational attainment may be raised to that appropriate for children of their age. The term includes children who are handicapped or whose needs for such special educational assistance result from poverty, neglect, delinquency, or cultural or linguistic isolation from the community at large.

(j) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(k) "Equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for provid-

ing educational services, including such items as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and books, periodicals, documents, and other related materials. Equipment does not include supplies which are consumed in use or which may not reasonably be expected to last longer than 1 year.

(l) "Federal percentage" means 50 percent of the average per pupil expenditure in a State, or, where applicable, in the United States, for a prior fiscal year, which is used as a factor in computing maximum grants under Title I of the Act.

(m) "Fiscal year" means a period beginning on July 1 and ending on the following June 30. (A fiscal year is designated in accordance with the calendar year in which the ending date of the fiscal year occurs.)

(n) "Free public education" means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary education, not above grade 12 in a State. Elementary education may, if so determined under State law, include education below grade 1 meeting the above criteria.

(o) "Handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education.

(p) "An institution for delinquent children" means a public or private nonprofit residential facility which is operated primarily for the care of, for an indefinite period of time or for a definite period of time other than one of short duration, children who have been adjudicated to be delinquent children.

(q) "An institution for neglected children" means a public or private nonprofit residential facility (other than a foster home) which is operated primarily for the care of, for an indefinite period of time, at least ten children who have been committed to the institution, or voluntarily placed in the institution, and for whom the institution has assumed or been granted custodial responsibility pursuant to applicable State law, because of the abandonment or neglect by, or death of, parents or persons acting in the place of parents.

(r) "Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. The term includes any State agency which is directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children. It also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(s) "Low-income factor" means the limit of family annual income which is used in determining families with low annual incomes for the purposes of Title I of the Act. For fiscal year 1967, the low-income factor is $2,000 and, for fiscal year 1968, the low-income factor is $3,000.

(t) "Program" means an overall plan with respect to funds made available under Title I of the Act during a fiscal year which is intended to be put into effect by a State or local educational agency or the Department of the Interior through one or more projects.

(u) "Project" means an activity, or a set of activities, proposed by a State or local educational agency or the Department of the Interior and designed to meet certain of the special educational needs of certain educationally deprived children.

(v) "Project area" means the attendance area, or combination of attendance areas, having a high concentration of children from low-income families which, without regard to the location of the project itself, is designated as the area whose children are to be served by the project. The term does not apply to a project to be carried out by a State agency at a school operated or supported by that agency for handicapped children or for children in institutions for neglected or delinquent children.

(w) "School facilities" means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site grading and improvements) on which such facilities are constructed, but does not mean gymnasiums or similar facilities intended primarily for use for exhibitions for which admission is to be charged to the general public.

(x) "Secondary school" means a day or residential school which provides secondary education, as determined under State law, but not beyond grade 12.

(y) "Service function" means an educational service which is performed by a legal entity, such as an intermediate agency, whose jurisdiction does not extend to the whole of the State and which is authorized to provide consultative, advisory, or educational program services to public elementary or secondary schools, or which has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools, rather than a service which is performed by a cultural or educational resource.

(z) "State" means a State of the Union, the District of Columbia, Wake Island, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

(aa) "State educational agency" means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

(bb) "Works of art" means those items, which may be in the nature of fixtures, that are incorporated in school facilities primarily because of their esthetic value. The cost of a work of art that is in the nature of a fixture shall be the estimated additional cost of incorporating those special esthetic features which exceed the general requirement of excellence of architecture and design.

Subpart B—Eligibility for and Amount of Grants and Payments

§ 116.2 Eligibility of local educational agencies.

(a) A local educational agency is eligible for a grant under Title I of the Act for a fiscal year if the Commissioner determines on the basis of satisfactory data available to him that the number of children aged 5 to 17, inclusive, in families residing in the school district of that local educational agency and having an annual income of less than the low-income factor, in families residing in that school district and receiving an annual income in excess of the low-income factor from payments under a State plan approved under Title IV of the Social Security Act, living in that school district in institutions for neglected or delinquent children (other than children for whom a State agency is directly responsible for providing free public education), and living in foster homes in that school district and being supported with public funds, amounts to at least 10.

(b) If the Commissioner does not have available satisfactory data on a school district basis, a local educational agency is eligible for such a grant if the school district served by it is located in whole or in part in a county in which the Commissioner determines that there are 10 or more of such children.

(c) The foregoing provisions of this section are not applicable to a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children.

§ 116.3 Determination of maximum grants and payments.

(a) The maximum grant for which a local educational agency (other than a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) is eligible to receive under Title I of the Act will be determined by the Commissioner, if satisfactory data are available for that purpose, by multiplying the sum of (1) the number of children aged 5 to 17, inclusive, in families residing in the school district of the local educational agency and having an annual income of less than the low-income factor prescribed in § 116.1(s), (2) the number of children of those ages in families residing in the school district and receiving, from payments under the program of aid to families with dependent children under a State plan approved under Title IV of the Social Security Act, an annual income in excess of the low-income factor prescribed in § 116.1 (s), (3) the number of children of those ages living in the school district in institutions for neglected or delinquent children (other than children for whom a State agency is directly responsible for

providing free public education) and (4) the number of children of these ages living in foster homes in the school district and being supported with public funds, by the Federal percentage prescribed in § 116.1(l) of the average per pupil expenditure in that State or, beginning with fiscal year 1968, the average per pupil expenditure in the United States, if higher.

(b) Unless the Commissioner determines that satisfactory data are available to enable him to determine the maximum grant for which a local educational agency is eligible, he shall determine the aggregate of the maximum grants for which all local educational agencies (other than State agencies directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) in each county of each State of the Union are eligible. Such an aggregate is hereinafter in this part referred to as a county aggregate maximum grant. Such county aggregate maximum grants will be allocated by State educational agencies among the several local educational agencies in each county in accordance with the provisions of §§ 116.4, 116.5, and 116.6.

(c) A county aggregate maximum grant will be determined in the same manner as a maximum grant is computed under paragraph (a) of this section except that the numbers of such children residing in the county, instead of the numbers of such children residing in an individual school district, are to be used in the computation.

(d) The amount of the grants to Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands, and the amount of the payments to the Department of the Interior to meet the special educational needs of educationally deprived children on reservations serviced by elementary and secondary schools operated for Indian children by that Department, are the amounts allotted to them by the Commissioner according to their respective needs from the sums appropriated for the purposes of Title I of the Act.

(e) The maximum grant for which a State agency directly responsible for providing free public education for handicapped children, or for children in institutions for neglected or delinquent children, is eligible will be determined by multiplying the number of children in average daily attendance, and receiving free public education, at schools for such children which are operated or supported by that State agency by the Federal percentage prescribed in § 116.1(l) of the average per pupil expenditure in that State or, beginning with fiscal year 1968 in the case of handicapped children, in the United States, if higher. The provisions of this paragraph (e) do not apply to Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

(f) The maximum grant for which a State educational agency is eligible for establishing or improving programs for migratory children of migratory agricultural workers is the sum of the estimated number of such migratory children aged 5 to 17, inclusive, who reside in the State full time and the full-time equivalent of the estimated number of such migratory children aged 5 to 17, inclusive, who reside in the State part time, multiplied by the Federal percentage of the average per pupil expenditure in the States of the Union and the District of Columbia. The estimate of the number of such migratory children will be derived by the Commissioner from the best data available to him of the number of intrastate migratory workers, and of the average number of interstate migratory workers, in the several States.

§ 116.4 Allocation of county aggregate maximum grants by State educational agencies.

(a) To the extent that a county aggregate maximum grant is based on children aged 5 to 17, inclusive, living in institutions for neglected or delinquent children, the county aggregate maximum grant shall be allocated among those local educational agencies in whose districts those institutions are located on the basis of the number of such children living in those institutions.

(b) The remainder of the county aggregate maximum grant shall be allocated by the State educational agency among the several local educational agencies whose school districts lie within the county as provided in paragraphs (c) and (d) on the basis of those available data which it deems best to reflect the current distribution in the county of children aged 5 to 17, inclusive, from low-income families, including families receiving payments under the program of aid to families with dependent children under a State plan approved under Title IV of the Social Security Act, without regard to the amount of such payments, and children in foster homes.

(c) If the State educational agency has available data showing the distribution among the several school districts in the county of the children aged 5 to 17, inclusive, from families receiving any aid for dependent children and if it deems that such data reflect the current distribution in the county of all children aged 5 to 17, inclusive, from low-income families and in foster homes, then the allocation among local educational agencies of such remainder of the county aggregate maximum grant shall be made solely on the basis of such data.

(d) If the available data referred to in paragraph (c) of this section are not deemed to reflect the current distribution in a county of all children aged 5 to 17, inclusive, from low-income families and in foster homes, then the State educational agency may combine those data with other available data on such weighted basis as it deems appropriate and best to reflect the current distribution in the county of such children or use such other method as it deems appropriate for that purpose.

(e) If the total allocation to a local educational agency as otherwise computed pursuant to this section would be less than an entitlement to a grant computed on the basis of 10 children, that local educational agency may be disregarded in the allocation of a county aggregate maximum grant among the local educational agencies in that county.

(f) If the allocation of entitlement to a maximum grant to a local educational agency as otherwise computed pursuant to this section would, without regard to any pro rata reduction, reduce the entitlement of that agency to an amount which is less than its maximum grant for the previous year, the State educational agency may modify that allocation of entitlement to a maximum grant to the extent necessary to make an orderly adjustment in the program of the local educational agency.

§ 116.5 Local educational agencies in more than one county.

The allocation to a local educational agency pursuant to § 116.4 shall be made separately for each county in which a part of the school district served by that local educational agency is located. The maximum grant for such a local educational agency shall be the sum of its allocations from county aggregate maximum grants.

§ 116.6 Local educational agencies with overlapping jurisdictions or serving children from another school district.

In any case in which two or more local educational agencies (other than State agencies directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) have responsibility for different groups of children in a district, or serve school districts which overlap, or in any case in which a local educational agency provides free public education for a substantial number of children residing in the school district of another local educational agency, the State educational agency may allocate the amount of the maximum grants among such local educational agencies in such manner as it determines will best carry out the purposes for which the grants under Title I of the Act are respectively made available.

§ 116.7 Changes in local educational agencies.

(a) In any case in which there is a merger or consolidation of local educational agencies during the school year, the maximum grant which each was eligible to receive shall become available to the surviving or consolidated agency. The surviving or consolidated agency shall be responsible for projects previously approved for each of the agencies participating in the merger or consolidation.

(b) In any case in which the geographical area of a school district served by a local educational agency is diminished, or divided with another local educational agency, during the school year, the State educational agency shall redetermine the maximum grants by using the same method used in making the original determination. However, nothing herein shall preclude the completion,

where appropriate, of previously approved projects by the agency originally submitting the projects by itself or through a cooperative undertaking.

§ 116.8 Limitation on grants for fiscal year 1967.

(a) The total amount approved for grants to any local educational agency (other than a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) for fiscal year 1967 shall be limited to 50 percent of the sum budgeted by that agency for current expeditures (see paragraph (h) of § 116.1) for that year.

(b) The determination of the budgeted sum shall be made on the basis of the budget as finally approved by the public authority responsible for such an approval. Until such time as the budget for that fiscal year shall have been finally approved, the grant to the local educational agency shall be tentatively limited to 40 percent of current expenditures for fiscal year 1966, subject to such upward adjustment as may be occasioned by the final approval of the budget for fiscal year 1967. The limitation on the grant to a local educational agency will be determined by the State educational agency at the time of the initial application of the educational agency except that where necessary the final determination of that limitation shall be deferred until the time of the first such application after final budget approval.

§ 116.9 Ratable reductions and reallotments.

(a) If the sums appropriated for any fiscal year are not sufficient to pay in full the amounts which all local and State educational agencies and the Department of the Interior are eligible to receive under Title I of the Act for that year, the amounts available to State and local educational agencies (other than those in Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) will, subject to such limitations as may be applied by statute to funds appropriated under Title I of the Act, be ratably reduced, except that the amounts made available to State educational agencies for administration and technical assistance with respect to the measurement of educational achievement and evaluation of projects will not be reduced below $75,000. Inasmuch as the amounts available for allotment among Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Department of the Interior for grants and payments are, in the first instance, based on the sums appropriated, such amounts are not subject to pro rata reduction under this paragraph.

(b) The Commissioner may set dates by which State educational agencies (other than those in Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) must certify to him the amounts for which applications of State and local educational agencies (including State agencies directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) have been or will, during that fiscal year, be approved by such agencies and by which such State educational agencies must file applications with the Commissioner for establishing or improving programs for migratory children of migratory agricultural workers. Subject to such limitations as may be applied by statute to funds appropriated under Title I of the Act, the excess of the amounts made available to such State and local educational agencies in accordance with paragraph (a) of this section over the amounts necessary to fund such approved or approvable applications (including amounts necessary to fund such special arrangements as may be made by the Commissioner for education of migratory children of migratory agricultural workers) shall be made available, first by State educational agencies to other educational agencies in the particular State and then by the Commissioner for educational agencies in other such States to offset ratable reductions made pursuant to paragraph (a) of this section but not to make available to an agency more than the maximum grant to which that agency is entitled. The amounts so made available under this paragraph shall be distributed among the State and local educational agencies applying for additional funds in amounts as nearly proportionate to the amounts of the ratable reductions applied to those agencies as is practicable for approvable new projects or enlargements or extensions of existing projects.

(c) The Commissioner may set dates by which State educational agencies in Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands must certify to him the amounts for which applications have been or will, during that fiscal year, be approved by such agencies, and by which the Department of the Interior will report to the Commissioner the amount needed by that Department for Title I projects. The excess of the amounts made available to any of such agencies or the Department of the Interior over the amounts which the Commissioner determines are needed by them will be redistributed among other such agencies and the Department of the Interior according to their respective needs for such amounts as redetermined by the Commissioner at that time.

(d) In the event that additional funds are made available for making payments under Title I of the Act for that year, such additional funds will be applied to increase ratably the amounts available under paragraphs (a) and (b) of this section to State and local educational agencies in States other than Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands and, to the extent called for by the Act appropriating such additional funds, the amounts available for allotment for grants and payments among the Department of the Interior and, together with appropriate additional amounts for administration and technical assistance, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. The amounts available to State educational agencies for administration and technical assistance will be ratably increased pursuant to this paragraph only to the extent that the amounts made available for grants, in the case of Puerto Rico, Wake Island, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands, are increased above $2,500,000 or, in the case of any other State, above $7,500,000. In no event, however, will the total amount made available to an agency exceed the maximum grant to which that agency is entitled.

§§ 116.10–116.15 [Reserved]

Subpart C—Project Applications

§ 116.16 Project applications.

(a) Grants under Title I of the Act to a local educational agency (including a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) will be made on the basis of applications therefor which are submitted to the State educational agency and approved by it in an aggregate amount not in excess of the amount of the funds made available for that local educational agency.

(b) Grants under Title I of the Act to a State educational agency for establishing or improving programs for migratory children of migratory agricultural workers will be made on the basis of applications therefor which are submitted to the Commissioner and approved by him. Such a grant will not exceed the amount of the funds made available by the Commissioner for that State educational agency after setting aside such amounts as are necessary for carrying out special arrangements with other public or nonprofit private agencies for conducting educational programs for migratory children of migratory agricultural workers when the Commissioner determines that a State is unable or unwilling to conduct such educational programs or that such special arrangements will result in more efficient and economic administration of educational programs for such children or that they will add to the welfare or educational achievement of such children.

(c) Payments under Title I of the Act to the Department of the Interior for a program to meet the special educational needs of educationally deprived children on reservations serviced by elementary and secondary schools operated for Indian children by that Department will be made on the basis of an application submitted by that Department to the Commissioner and approved by him.

(d) Subject to the reallotment authority in § 116.9, no State or local educational agency may assign any part of its eligibility to another agency. This does not, however, prevent a State edu-

cational agency from exercising its authority under § 116.6 nor prevent two or more applicants in one or more States from conducting a joint program or project (including a planning project) through a combined use of funds made available to them.

§ 116.17 Project covered by an application.

(a) An application for a grant under Title I of the Act by a local educational agency (other than a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) shall set forth a project for educationally deprived children residing in a project area composed of school attendance areas having high concentrations of children from low-income families or a project for serving children living in institutions for neglected or delinquent children, which project shall have been designed specifically to meet special educational needs of those educationally deprived children. The project itself shall be carried out at locations where the needs of the educationally deprived children can best be served. It may involve the participation of educationally deprived children residing outside the project area if such a participation will not dilute the effectiveness of the project with respect to children residing in the project area.

(b) A State or local educational agency (including a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) may apply for a grant in an amount not exceeding one percent of the maximum grant it is eligible to receive or $2,000, whichever is greater, for planning during the current fiscal year which was, or will be, directly related to programs or projects to be carried out under Title I of the Act and has resulted, or is reasonably likely to result, in a program which will be carried out, if funds are necessary for that purpose because of the innovative nature of the program or project or because the local educational agency lacks the resources necessary for adequate planning.

(c) Each application for a grant under Title I of the Act by such a local educational agency, other than an application for a grant for planning, shall designate the project area or the institution or special school for which the project is designed. A project area may include one or more attendance areas having high concentrations of children from low-income families, but the project area must be sufficiently restricted in size in relation to the nature of the project as to avoid jeopardizing its effectiveness in meeting the aims and objectives of the project. Each such application shall describe the special educational needs identified with educationally deprived children residing in the project area at which the project is directed. Each local educational agency shall design its projects in such a manner, and apply them to such school attendance areas having high concentrations of children from low-income families, as will best meet the special educational needs of the educationally deprived children.

(d) A school attendance area for either a public elementary or a public secondary school may be designated as a project area if the estimated percentage of children from low-income families residing in that attendance area is as high as the percentage of such children residing in the whole of the school district, or if the estimated number of children from low-income families residing in that attendance area is as large as the average number of such children residing in the several school attendance areas in the school district. In certain cases, the whole of a school district may be regarded as an area having a high concentration of such children and be approved as a project area, but only if there are no wide variances in the concentrations of such children among the several school attendance areas in the school district.

(e) In the case of such a project undertaken jointly by two or more such local educational agencies, the project area with respect to each school district must be one that qualifies as a project area under paragraph (d) of this section. However, the whole of the project area must be considered in determining whether it is sufficiently restricted in size in relation to the nature of the project as to maintain its effectiveness in meeting the aims and objectives of the project.

(f) The project for which an application for a grant is made by a local educational agency should be designed to meet the special educational needs of those educationally deprived children who have the greatest need for assistance. However, none of the educationally deprived children who are in need of the special educational services to be provided shall be denied the opportunity to participate in the project on the ground that they are not children from low-income families or on the ground that they are not attending school at the time.

(g) Each such project must be tailored to contribute particularly toward meeting one or more of the special educational needs of educationally deprived children and should not be designed merely to meet the needs of schools or of the student body at large in a school or in a specified grade in a school.

(h) Each application for a grant under Title I of the Act for educationally deprived children residing in a project area shall contain an assurance that the use of the grant funds will not result in a decrease in the use for educationally deprived children residing in that project area of State or local funds which, in the absence of funds under Title I of the Act, would be made available for that project area, and that neither the project area nor the educationally deprived children residing therein will otherwise be penalized in the application of State and local funds because of such a use of funds under Title I of the Act. No project under Title I of the Act will be deemed to have been designed to meet the special educational needs of educationally deprived children unless the funds made available for that project are to be used to supplement, and not to supplant, State or local funds.

(i) No application for a project grant under Title I of the Act may cover the construction of school facilities unless such construction is demonstrated as being essential in order to assure the success of a program or project under Title I of the Act. If the construction of school facilities is so demonstrated as being essential for a program or project, the application must nevertheless comply with other requirements of Title I of the Act and the regulations in this part, such as the requirements in § 116.21 in regard to labor standards and overall State construction planning and, in relation to the overall program, the requirements in § 116.19 in regard to participation by children enrolled in private schools.

(j) A project by a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children may include the acquisition of equipment and, in the case of schools owned by that State or a public agency of that State, the construction of school facilities. Each project of such a State agency shall be designed to meet the special educational needs of children attending schools operated or supported by that State agency.

(k) An application by a State educational agency to the Commissioner for a grant under Title I of the Act for the education of migratory children of migratory agricultural workers shall describe a program designed to meet the special educational needs of such migratory children. The application shall describe the individual projects that are contemplated and identify the local educational agencies, if any, through which the projects will be carried out, which application shall be in sufficient detail to enable the Commissioner to determine whether he will exercise his authority to make special arrangements pursuant to section 205(a)(2) in Title I of the Act. Within the total of the grants made available for the program, the program covered by an approved application may, without altering the essential nature of the program, be modified from time to time to reflect changing conditions. The State educational agency shall notify the Commissioner of any such modifications.

(l) An application by the Department of the Interior to the Commissioner for payments to meet the special educational needs of educationally deprived children on reservations serviced by elementary and secondary schools operated for Indian children by that Department shall describe a program or individual projects designed to meet the special educational needs of educationally deprived children who attend such schools or who are eligible to attend such schools or to participate in preschool programs of that Department. The program shall include a provision for grants

to local educational agencies with respect to out-of-State Indian children in the elementary or secondary schools of such agencies under special contracts with the Department of the Interior, which grants shall not exceed, for each such child one-half the average per pupil expenditure in the State in which the agency is located. The application shall describe the overall program under Title I of the Act of the Department of the Interior which will administer the program to Indian children on the basis of its determination of their special educational needs. An application by the Department of the Interior will be approved by the Commissioner upon his determination that the program in that application complies with the applicable requirements of Title I of the Act and the regulations in this part. Individual projects to carry out the approved program of the Department of the Interior will be implemented by that Department in a manner consistent with such requirements. The Department of the Interior will advise the Commissioner as to the manner the Department's program is being implemented, including a description of each individual project.

§ 116.18 Size, scope, and quality of projects.

(a) Each application by a State or local educational agency for a grant (other than one for a planning project) must propose projects of sufficient size, scope and quality as to give reasonable promise of substantial progress toward meeting the needs of educationally deprived children for whom the projects are intended. The program of a local educational agency must involve the expenditure of at least $2,500 or such lesser amount as may be set by the State educational agency upon its determination that it would be impossible, for such reasons such as distance or difficulty of travel, for the applicant to join effectively with other local educational agencies for the purpose of meeting that dollar requirement. The budget for a project shall avoid imprudent, extravagant or wasteful expenditures which would tend to defeat the intent of the Act to meet the special educational needs of educationally deprived children. The project application must justify any proposed expenditures above the level of expenditures by the applicant for other comparable activities.

(b) Each application for a grant (other than one for a planning project) or for payments to the Department of the Interior shall provide an assessment of the special educational needs of the educationally deprived children who would be eligible to receive benefits under Title I of the Act or incorporate by reference the assessment contained in a prior application. Each such application for a grant shall describe the objectives of the project in relation to those special educational needs. It must demonstrate that the project has been sufficiently well planned to meet those objectives and that the project makes adequate provision for its implementation in an effective manner.

(c) A joint application may be made by two or more eligible educational agencies for grants to each for a single project (including a planning project) to be carried out jointly or through other arrangements between or among such educational agencies.

(d) The program of a local educational agency entitled to funds under Title I of the Act on the basis of children living in institutions for neglected or delinquent children shall provide for the special educational needs of such children.

(e) Applications for grants (other than those for planning projects) or payments are to be concentrated on a limited number of projects and applied to a limited number of educationally deprived children so as to give reasonable promise of promoting to a marked degree improvement in the educational attainment, motivation, behavior or attitudes of children.

§ 116.19 Participation by children enrolled in private schools.

(a) Each local education agency shall provide special educational services designed to meet the special educational needs of educationally deprived children residing in its district who are enrolled in private schools. Such educationally deprived children shall be provided genuine opportunities to participate therein consistent with the number of such educationally deprived children and the nature and extent of their educational deprivation. The special educational services shall be provided through such arrangements as dual enrollment, educational radio and television, and mobile educational services and equipment. Such opportunities shall be made available to those educationally deprived children who reside in the public school attendance area designated as the project area or in a geographical area reasonably coterminous with the project area. If it is not practicable to apply a project to children enrolled in private schools because they are enrolled in a private school located in another school district, the applicant may make arrangements for such children with the local educational agency serving such other school district, including where appropriate the making of a joint project application.

(b) The needs of educationally deprived children enrolled in private schools, the number of such children who will participate in the program and the types of special educational services to be provided for them, shall be determined, after consultation with persons knowledgeable of the needs of these private school children, on a basis comparable to that used in providing for the participation in the program by educationally deprived children enrolled in public schools.

(c) The opportunities for participation by educationally deprived children in private schools in the program of a local educational agency under Title I of the Act shall be provided through projects of the local educational agency which furnish special educational services that meet the special educational needs of such educationally deprived children rather than the needs of the student body at large or of children in a specified grade. The application for each project shall show the number of educationally deprived children enrolled in private schools who are expected to participate therein and the degree and manner of their expected participation.

(d) Any project to be carried out in public facilities and involving a joint participation of children enrolled in private schools and children enrolled in public schools shall include such provisions as are necessary to avoid classes which are separated by school enrollment or religious affiliation of the children.

(e) Public school personnel may be made available on other than public school facilities only to the extent necessary to provide special services (such as therapeutic, remedial, or welfare services, broadened health services, school breakfasts for poor children, and guidance and counseling services) for those educationally deprived children for whose needs such special services were designed and only when such services are not normally provided by the private school. The application for a project including such special services shall provide assurance that the applicant will maintain administrative direction and control over those services. Subject to the provisions of § 116.20, mobile or portable equipment may be used on private school premises for such period of time within the life of the current project for which the equipment is intended to be used as is necessary for the successful participation in that project by educationally deprived children enrolled in private schools. Provisions for special educational services for educationally deprived children enrolled in private schools shall not include the paying of salaries for teachers or other employees of private schools, except for services performed outside their regular hours of duty and under public supervision and control, nor shall they include the using of equipment other than mobile or portable equipment, on private school premises or the constructing of private school facilities.

(f) In the event that the special educational needs of the educationally deprived Indian children attending private schools on a reservation cannot be met by the appropriate local educational agency because of the remote location of those schools, the Department of the Interior shall design its program to meet the special educational needs of such educationally deprived Indian children through appropriate arrangements that provide genuine opportunities for participation by such educationally deprived Indian children which are consistent with the number of such children and the nature and extent of their educational deprivation.

(g) The foregoing provisions of this section, other than those relating to the construction of private school facilities, do not apply to the use of funds granted to a State agency because of its direct responsibility for providing free public

education for handicapped children or for children in institutions for neglected or delinquent children.

§ 116.20 Title to property and control over funds.

(a) Control over the use of funds provided under Title I of the Act, and title to and administrative control over property acquired with such funds, shall be in a public agency, which will exercise such control. Such funds and property shall be used for the purposes provided in Title I of the Act, but such a use shall not inure to the benefit of any private school. The incidental use of such property for other purposes is permitted only for related educational purposes on public premises and only so long as such a use does not interfere with the carrying out of a Title I project.

(b) Equipment acquired with funds provided under Title I of the Act may, in certain cases, be placed on private school premises for a limited period of time, but the title to and administrative control over such equipment must be retained and exercised by a public agency. In exercising that administrative control, the public agency shall not only keep records of, and account for, the equipment but shall also assure itself that the equipment is being used solely for the purposes of the project, and remove the equipment from the private school premises when necessary to avoid its being used for other purposes or when it is no longer needed for the purposes of the project.

(c) The application by a local educational agency must contain a satisfactory assurance that the funds provided under Title I of the Act, and property derived therefrom, will at all times be under the control of, and be administered by, a public agency in accordance with the provisions of the Act and the regulations in this part.

§ 116.21 Requirements with respect to construction.

(a) In a case of a project involving the construction of school facilities, the application for a grant shall provide assurances that all laborers and mechanics employed by contractors or subcontractors on such construction will be paid wages at rates not less than those determined by the Secretary of Labor to be prevailing on similar construction in the locality in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a–5); that such contractors and subcontractors will comply with the regulations in 29 CFR Part 3 (see 29 F.R. 97), and include all clauses required by 29 CFR 5.5 (a) and (c) (see 29 F.R. 100, 101, 13463, and 29 CFR Part 3, Subpart B—Interpretation of the fringe benefits provisions of the Davis-Bacon Act—published at 29 F.R. 13465); and that the nondiscrimination clause prescribed by Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319), will be incorporated in any contract for construction work, or modification thereof, as defined in said Executive Order.

(b) In developing plans for the construction of school facilities, the applicant agency shall give due consideration to excellence of architecture and design and to the inclusion of works of art, for which funds under Title I of the Act will be available in an amount not in excess of 1 percent of the cost of such construction including the providing of works of art. In any event, the construction must be functional, must be undertaken in an economical manner, and must not be elaborate in design or extravagant in the use of materials.

(c) The State educational agency shall not approve a project involving the construction of school facilities unless it determines that the construction is consistent with overall State plans for construction. It shall not approve such a project involving construction, other than minor remodeling, altering or improving of school facilities, unless the approval is conditioned upon approval of the construction plans and specifications by the State educational agency, and further conditioned upon the award of a construction contract on or before a date specified in the project application as providing a reasonable period of time taking into consideration the nature of the program or project to be served by the construction of the school facilities and the magnitude of the construction to be undertaken, which date shall in no event be later than June 30 of the following fiscal year. Such plans and specifications shall be approved only after due consideration has been given, to the extent appropriate in view of the uses to be made of the facilities, of the accessibility of the facilities to, and the usability of them by, handicapped persons, and of their compliance with the minimum standards contained in "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped" approved by the American Standard Association, Inc., with appropriate usable segments of "Building Standards of the University of Illinois Rehabilitation Center" and "Occupancy Guide-Department of Veterans Benefits, Regional Offices, Veterans Administration," and with such other standards in that regard as the Secretary of Health, Education, and Welfare may prescribe or approve.

(d) In the planning of the construction of school facilities involving the use of funds under Title I of the Act, each State and local educational agency shall, in accordance with the provisions of Executive Order No. 11296 of August 10, 1966 (31 F.R. 10663), and such rules and regulations as may be issued by the Department of Health, Education, and Welfare to carry out those provisions, evaluate flood hazards in connection with such school facilities, and as far as practicable, avoid the uneconomic, hazardous, or unnecessary use of flood plains in connection with such construction.

(e) All contracts for construction (as defined in § 116.1(f)) shall be awarded to the lowest qualified bidder on the basis of open competitive bidding except that, if one or more items of construction are covered by an established alternative procedure, consistent with State and local laws and regulations, which is approved by the State agency as designed to assure construction in an economical manner consistent with sound business practice, such alternative procedure may be followed.

§ 116.22 Provision for measurement of educational achievement and evaluation of programs.

(a) Each application by a State or local educational agency or by the Department of the Interior shall describe the procedures and techniques to be utilized in making at least annually an evaluation of the effectiveness of its program under Title I of the Act in meeting the special educational needs of educationally deprived children, including appropriate objective measurements of educational achievement.

(b) The measurement of educational achievement under such a program shall include the measuring or estimating of educational deprivation of those children who will participate in the program and the comparing, at least annually, of the educational achievement of participating children with some objective standard or norm. The type of measurement used by a local educational agency should give particular regard to the requirement that the State educational agency report to the Commissioner on the effectiveness of the programs in that State in improving the educational achievement of educationally deprived children.

(c) The evaluation of programs and projects should, consistent with the nature and extent of participation by children enrolled in private schools, be extended to such participation.

§ 116.23 Reports by local educational agencies.

Each application by a local educational agency (including a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) shall provide assurance that it will render to the State educational agency an annual report and such other reports, in such form, and containing such information, as may be reasonably necessary to enable the State educational agency to perform its duties under Title I of the Act, including the measurements of educational achievement and program effectiveness required by § 116.22. The local educational agency shall keep such program and fiscal records, and afford such access thereto, as the State educational agency may find necessary to assure the correctness and verification of such reports and the expenditure of funds granted under Title I of the Act.

§ 116.24 Relation to other programs.

(a) Each application for a grant under Title I of the Act shall demonstrate that, in the development of the program or project, the applicant has taken into consideration those benefits that are or may be made available for the affected children through various agencies of the

Federal Government, as well as through State and local agencies and private nonprofit organizations, and has coordinated the program or project with programs available through such agencies or organizations, including community action programs under Title II (42 U.S.C. 2781–2831) of the Economic Opportunity Act of 1964 and shall further demonstrate that there will be similar coordination in the operation of the program or project. The purpose of the foregoing is to avoid a duplication of benefits and to assure the most effective use of funds under Title I of the Act toward meeting the special educational needs of educationally deprived children.

(b) Each application by a State educational agency for a grant to establish or improve programs of education for migratory children of migratory agricultural workers shall demonstrate that in planning the program and the projects comprising that program there has been, and in carrying out such program and projects there will be, appropriate coordination with programs administered under Part B of Title III (42 U.S.C. 2861) of the Economic Opportunity Act of 1964. Each such application shall also describe the manner in which the program and projects are coordinated with similar programs and projects in other States, including the transmittal of pertinent information with respect to school records of such migratory children.

(c) In the coordination with other programs the commingling of funds under Title I of the Act with funds under such other programs is not authorized, but the simultaneous use of funds under each of those programs to finance identifiable portions of a single project is permitted.

(d) The application by the Department of the Interior for payment to meet the special educational needs of educationally deprived children on reservations serviced by elementary and secondary schools operated for Indian children shall contain an assurance that the program and projects have been developed in cooperation with appropriate Indian representatives and community action agencies and that the program and projects will be coordinated with appropriate Federal, State, and local authorities and private nonprofit organizations.

§ 116.25 Dissemination and utilization of results of educational research and demonstrations.

(a) Each application by a State or local educational agency for a grant, or by the Department of the Interior for a payment, shall describe the methods to be used by the applicant for reviewing, selecting, and disseminating to teachers and educational administrators significant information on the latest developments and most recent experiments in education so that such information will be available for use in program planning and operation. The provisions in that regard may include, among other things, in-service education, the use of professional librarians on library informational systems, professional workshops and seminar consultations and visitations, and reports on the organization, operation and outcome of projects under Title I of the Act.

(b) Promising educational practices developed through projects of the applicant, or through information disseminated to it by other applicants, shall be considered for, and to the extent deemed appropriate and not in violation of the assurance called for by paragraph (h) of § 116.17, may be adopted in, all of the schools of the applicant through the use of available funds other than those under Title I of the Act.

§§ 116.26–116.30 [Reserved]

Subpart D—Duties and Functions of State Educational Agencies

§ 116.31 Participation by States.

(a) Any State desiring to participate in the grant programs under Title I of the Act shall, through its State educational agency, submit to the Commissioner an application for such a participation. Each State educational agency seeking a grant for establishing or improving programs of education for migratory children of migratory agricultural workers shall submit a separate application for such a grant to the Commissioner pursuant to § 116.17(k).

(b) Each application by a State educational agency shall provide the official name of the agency responsible for carrying out the functions of a State educational agency under Title I of the Act.

(c) The application for participation by the State in the grant program shall contain an assurance of the State educational agency that each application by a local educational agency (including a State agency directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) approved by the State educational agency will comply with the requirements of Title I of the Act and the regulations in subpart C of this part, that the State educational agency will require each such local educational agency to carry out all assurances given by it in, and to perform all obligations imposed on it in connection with, its approved applications for grants, and that the State educational agency will in all other respects comply with the requirements imposed on it by Title I of the Act and the regulations in this part.

(d) The application for participation by the State in the grant program shall contain an assurance that fiscal control and fund accounting procedures will be adopted to assure the proper disbursement of, and accounting for, Title I funds paid to the State, including such sums as may be paid to State and local educational agencies with respect to approved projects.

(e) The State educational agency shall designate the officer who will receive and have custody of funds granted to the State under Title I of the Act, who will pay to State and local educational agencies the amounts distributed to them, who will receive the repayments by State and local educational agencies of such portion of the funds paid to them as remain unexpended at the close of the period for which they were made available for expenditure, and who will pay out the amounts expended by the State educational agency for the performance of those duties which are imposed on it pursuant to Title I of the Act and the regulations in this part.

(f) Each application by a State educational agency shall contain an assurance that it will make periodic reports to the Commissioner evaluating the effectiveness of the programs and projects of State and local educational agencies, and the use by such educational agencies of grants under Title I of the Act, in improving the educational attainment of educationally deprived children. Such reports shall include the results of objective measurements of educational achievement under the programs of the several participating educational agencies with particular reference to progress made toward meeting the special educational needs of educationally deprived children.

(g) Each application by a State educational agency shall contain an assurance that it will make such other reports to the Commissioner as he may reasonably require from time to time to enable him to perform his duties under Title I of the Act. Such reports shall include a disclosure of any allegations of substance which may be made by local educational agencies or private individuals or organizations of actions by State or local educational agencies contrary to the provisions of Title I of the Act or the regulations in this part, a summary of the result of any investigations made or hearings held with respect to those allegations, and a statement of the disposition by the State educational agency of those allegations. It is recognized that the responsibility with respect to the resolution of such matters rests, in the first instance, in the State educational agency.

(h) Each application by a State educational agency shall contain an assurance that it will keep such records, and afford the Commissioner such access thereto, as he may find necessary to assure the correctness of the reports required to be made and the adequacy of the fiscal control over and the accounting for Title I funds paid to the States.

§ 116.32 Certificate of State attorney general.

The application for participation by a State in the grant program under Title I of the Act, and each application for a grant to establish or improve programs of education for migratory children of migratory agricultural workers, shall include a certificate by the State attorney general or other appropriate State legal officer to the effect that the agency submitting the application has the authority under State law to perform the duties and functions of a State educational agency under Title I of the Act and the regulations in this part, including those arising from the assurances given in the application.

§ 116.33 Allocation to local educational agencies.

(a) In those instances in which the determination of the Commissioner with respect to the maximum amount of grants relates only to county aggregate maximum grants, the State educational agency shall allocate such county aggregate maximum grants among the local educational agencies within the counties on the basis of such criteria as the State educational agency may apply in accordance with § 116.4 and § 116.6.

(b) The State educational agency shall promptly advise the Commissioner of its allocations of county aggregate maximum grants among the several local educational agencies in each county and the criteria on which such allocations were based.

(c) The State educational agency shall advise the Commissioner of the amounts needed to fund those applications by local educational agencies for grants which are approved by the State educational agency, together with appropriate information concerning each of the projects covered by such applications, and of the additional amount not in excess of (1) one percent of the maximum grants to State and local educational agencies of the State as adjusted pursuant to § 116.9 or (2) $75,000 (or $25,000 in the case of Puerto Rico, Wake Island, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands), whichever is greater, which is required by the State educational agency for administration and for technical assistance to local educational agencies with respect to the measurement of educational achievement and evaluation of programs called for by § 116.22.

§ 116.34 Approval of applications from local educational agencies.

(a) The State educational agency shall review all applications by local educational agencies (including State agencies directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) in the State for grants under Title I of the Act to determine whether such applications meet the requirements of the Act and the regulations in subpart C of this part. The State educational agency shall not approve such an application unless it determines that the application does effectively meet the requirements of the Act and the regulations in subpart C of this part and that the State educational agency is able to give the Commissioner the assurances with respect to that application which are required by the regulations in this subpart. The State educational agency shall not approve an application by a local educational agency which, together with other approved applications by that agency, exceeds the amount available for grants to that agency.

(b) The State educational agency may approve an application in part or for less funds than is called for by the application only if such an approval does not have the effect of altering the project to such an extent that it no longer provides reasonable promise of substantial progress toward meeting the special educational needs of educationally deprived children.

(c) The State educational agency shall not finally disapprove any application in whole or in part without first affording the local educational agency submitting the application reasonable notice and opportunity for a hearing with respect to such action.

(d) The terms and provisions of each approved project shall be made available, by the State educational agency. and by the affected local educational agency or agencies, for public inspection.

§§ 116.35–116.40 [Reserved]

Subpart E—Payments

§ 116.41 Payments to States.

(a) The maximum amount of all payments which may be made to a State for grants under Title I of the Act is the aggregate of the maximum eligibilities of all State and local educational agencies of the State for grants and the maximum eligibility of the State educational agency for administration and technical assistance with respect to the measurement of educational achievement and evaluation of projects, as that aggregate is adjusted pursuant to § 116.9.

(b) The Commissioner will, during the fiscal year, pay to each State an amount which is equal to the aggregate amount for which projects of State and local educational agencies are approved by the State educational agency or by the Commissioner, plus such amount as the State educational agency is entitled to and expends for such administration and technical assistance. The Commissioner may make advances to each State submitting an application for participation in the program under Title I of the Act and requesting such an advance.

(c) Until such time as the Commissioner has finally determined the maximum eligibilities for grants of all State and local educational agencies in all the States, he will make a tentative ratable reduction in the amounts payable to States and will further limit such amounts in order for him to be in a position to make such final ratable reductions as may be necessitated by the amount of the available appropriations.

(d) Each local educational agency receiving a distribution of grants for approved programs and projects shall, at the end of the period for which expenditures of such grants are authorized, release to the State educational agency any unexpended balances of such grants. The State educational agency shall report to the Commissioner the amount of such unexpended balances as well as the unexpended balances of grants to the State educational agency for such administration and technical assistance, and all such unexpended balanees shall be taken into account by the Commissioner in making payments to the State thereafter.

§ 116.42 Obligation of Federal appropriations.

(a) The notification to the Commissioner of the approval by State educational agencies of projects under Title I of the Act by local educational agencies for specified amounts within the limits of the amounts available for that purpose will be regarded as obligating the Government of the United States in such specified amounts. Federal appropriations so obligated will remain available for use by such local educational agencies as prescribed in § 116.46.

(b) Amounts made available for expenditure by State educational agencies for administration and technical assistance with respect to the measurement of educational achievement and evaluation of programs in accordance with the provisions of section 207(b) in Title I of the Act will be regarded as obligations of the Government of the United States. Federal appropriations so obligated will remain available for use by such local educational agencies as prescribed in § 116.46.

(c) The approval by the Commissioner of applications by State educational agencies for establishing or improving programs of education for children of migratory agricultural workers will be regarded as obligating the Government of the United States for the amounts approved for such projects. Federal appropriations so obligated will remain available for use by such State educational agencies as prescribed in § 116.46.

§ 116.43 Distributions to State or local educational agencies.

(a) Subject to the provisions of § 116.45, the State educational agency in each State participating in the program under Title I of the Act shall distribute to eligible State and local educational agencies the sums made available to the State educational agency by the Commissioner for the programs or projects of such State and local educational agencies approved by the State educational agency or the Commissioner during the fiscal year for which the Federal appropriations are made available.

(b) Federal funds so made available to a State educational agency shall be drawn down by the State educational agency or transferred to local educational agencies in installments substantially coinciding with the need for such funds based upon the estimated rates of expenditure by such State or local educational agencies.

§ 116.44 Limitation on payments to a State.

No payments by the Commissioner under Title I of the Act will be made to a State for any fiscal year in which the State has taken such payments into consideration in determining the eligibility of a local educational agency for State aid, or in determining the amount of that aid, with respect to the free public education of children in such a way as to penalize the local educational agency in relation to the availability of State or local funds.

§ 116.45 Limitations on payments to a local educational agency.

(a) No payments to a State under Title I of the Act for any fiscal year may be paid by the State educational agency to a local educational agency unless the State educational agency finds that the combined fiscal effort of that local educational agency and the State with respect to the provision of free public education by that local educational agency for the preceding fiscal year was not less than such a combined fiscal effort for that purpose for the second preceding fiscal year.

(b) For purposes of this section, fiscal effort by a local educational agency shall be measured by the amount of the current expenditures per pupil by the local educational agency other than expenditures from funds derived from Federal sources for which the local educational agency is required to account to the Federal Government directly or through the State educational agency, such as funds under Titles I, II, and III of the Act, Titles III and V of the National Defense Education Act of 1958, and the Economic Opportunity Act of 1964. Expenditures by a State with respect to a local educational agency rather than by such a local educational agency itself shall be deemed to have been maintained at the same level in the preceding fiscal year as in the second preceding fiscal year unless the basis for making such expenditures has been altered or if such expenditures are assumed by such a local educational agency. In such an event, the actual expenditures of that nature shall be taken into account in both years in determining combined fiscal effort. A combined fiscal effort in the preceding fiscal year shall not be deemed to be a reduction from that in the second preceding fiscal year unless the per pupil expenditure in the preceding fiscal year is less than that in the second preceding fiscal year by more than 5 percent. Any such reduction in fiscal effort by a local educational agency for any fiscal year by more than 5 percent will disqualify a local educational agency unless the local educational agency is able to demonstrate to the satisfaction of the State educational agency that such a reduction was occasioned by an unusual event, such as the removal of a large segment of property from the tax rolls, that could not have been fully anticipated or reasonably compensated for by the local educational agency and that fiscal effort of the local educational agency does not otherwise indicate a diminished fiscal effort.

§ 116.46 Use of Federal funds and liquidation of obligations by State or local educational agencies.

(a) Federal funds granted under Title I of the Act to State and local educational agencies shall remain available until August 31 following the fiscal year in which such amounts were made available for use by such State and local educational agencies for projects approved during that fiscal year. Grants for construction of school facilities shall remain available for use for that purpose for a reasonable period of time as determined pursuant to § 116.21(c).

(b) Federal funds made available under Title I of the Act to State educational agencies for administration and technical assistance will remain available for such use until the close of the current fiscal year.

(c) For the purposes of this section a use of funds under Title I of the Act by a State or local educational agency will be determined on the basis of documentary evidence of binding commitments for the acquisition of goods or property, for the construction of school facilities, or for the performance of work, or on the basis of a reservation of funds for administrative activities in connection with the completion of project activities such as evaluation and auditing activities, except that the use of funds for personal services other than those for administrative activities for which such a reservation of funds has been made, for services performed by public utilities, for travel, and for rental of equipment and facilities shall be determined respectively on the basis of the time such services were rendered, such travel was performed, and such rented equipment and facilities were used.

(d) Federal funds under Title I of the Act shall not be available for use with respect to binding commitments (other than those relating to personal services, utility services, travel, or the rental of equipment or facilities) entered into, or with respect to personal services, utility services, travel or the rental of equipment or facilities rendered or performed by or for a State educational agency with respect to administration or technical assistance prior to the effective date of the approval by the Commissioner of the State application for participation, which in no event will be earlier than the date on which it was received by the Commissioner in substantially approvable form and appropriations are made for that purpose.

(e) Federal funds granted to State educational agencies for establishing or improving programs of education under Title I of the Act for migratory children of migratory agricultural workers, and Federal funds distributed to local educational agencies (including State agencies directly responsible for providing free public education for handicapped children or for children in institutions for neglected or delinquent children) for programs under Title I of the Act, shall not be available with respect to binding commitments (other than those relating to personal services, utility services, travel, or the rental of equipment or facilities) entered into prior to, or with respect to personal services, utility services, travel, or the rental of equipment or facilities rendered or performed prior to, the effective date of the approval by the Commissioner of the State application for participation or (except for commitments or services related to planning projects) prior to the date on which the applicant was notified that the application of the State or local educational agency for a grant with respect to that project was submitted for approval to the State educational agency or the Commissioner in substantially approvable form. Federal funds from two separate fiscal year appropriations are not available for payment with respect to a single such commitment.

(f) Obligations entered into by State and local educational agencies and payable out of funds under Title I of the Act shall be liquidated during the fiscal year following the fiscal year in which such funds are made available for use by such agencies unless prior to the end of that following fiscal year the State educational agency reports to the Commissioner the reasons why such obligations cannot be timely liquidated and, on the basis thereof, the Commissioner extends the time for so liquidating obligations.

§ 116.47 Expenditures by State and local educational agencies.

(a) Amounts granted or distributed to State or local educational agencies for approved projects may be expended by such agencies for such projects in the amounts for which they were approved by the Commissioner or the State educational agency. Amounts for approved projects may, within the limit of the amounts made available to the State or local educational agency for programs or projects, be varied upward or downward by 10 percent of such respective amounts upon the determination by the State or local educational agency that such projects and the program of that agency will continue to meet the requirements of Title I of the Act and the regulations in this part. A variation in excess of 10 percent may be made only with the approval of the Commissioner or the State educational agency which approved the original project.

(b) All proceeds from the sale of property being inventoried pursuant to the provisions of § 116.55 but not less than the fair market value of such property, and the net proceeds from the rental of such property, shall be credited to the Federal Government.

§ 116.48 State fiscal control and audit.

(a) The State educational agency shall, for that agency and local educational agencies, provide for such fiscal control and fund accounting procedures as may be necessary for the proper disbursement of funds paid to the State and to local educational agencies under Title I of the Act.

(b) All expenditures by local educational agencies or by State educational agencies of Federal funds granted under Title I of the Act shall be audited either by State auditors or by other appropriate auditors. The State educational agencies shall, with due regard for Federal auditing requirements, provide for appropriate audit standards for that purpose. The results of such audits shall be used to substantiate State agency records and shall be made available to Federal auditors. Federal auditors shall be given access to such records or other documents as may be necessary to substantiate the results of such audits.

§§ 116.49–116.50 [Reserved]

Subpart F—General Provisions

§ 116.51 Approval of State application.

The Commissioner will approve each application by a State, through its State educational agency, to participate in the grant program under Title I of the Act if he determines that the application meets the requirements of section 206(a) in Title I of the Act and the regulations in Subpart D of this part. He will not finally disapprove any State application, or any application by a State educational agency for migratory children of migratory agricultural workers, except after reasonable notice and opportunity for a hearing to the State educational agency with repect to the disapproval of that application.

§ 116.52 Withholding by the Commissioner.

(a) Whenever the Commissioner, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there has been a failure to comply substantially with any assurance set forth in the application of that State, or in the application of that State educational agency, approved by the Commissioner, for a grant to establish or improve programs of education for migratory children of migratory agricultural workers, he will notify the agency that further payments will not be made to the State under Title I of the Act (or, in his discretion, that the State educational agency will not make further payments under Title I of the Act to specified local educational agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until the Commissioner is so satisfied, further payments under Title I of the Act will not be made to that State or payments by the State educational agency will be limited to payments to local educational agencies not affected by the failure, as the case may be.

(b) Prior to initiating a hearing under this section, the Commissioner will attempt to resolve any apparent differences between him and the State educational agency regarding the interpretation or application of the provisions of Title I of the Act and the regulations in this part, including any apparent differences with respect to the disposition of matters reported by the State educational agency pursuant to § 116.31(g). Nothing herein shall be deemed to prevent any State educational agency from seeking the advice of the Commissioner prior to disposing of such matters.

§ 116.53 Allowable expenditures.

(a) Federal funds made available to State and local educational agencies may be used by those agencies for such expenditures as are reasonably necessary for carrying out approved projects.

(b) Federal funds granted to State educational agencies for administration and for technical assistance to local educational agencies with respect to the measurements of educational achievement and evaluation of the effectiveness of projects in meeting the special educational needs of educationally deprived children may be used by those agencies for such expenditures as are reasonably necessary for carrying out those activities.

(c) Federal funds made available under Title I of the Act to local educational agencies and to State educational agencies may be used only for those expenses which are incurred as a result of the grant program under that title. They include expenses such as those for:

(1) Salaries, wages, and other personal service costs of permanent and temporary staff employees and consultants for the performance of services reasonably necessary for the grant program under Title I of the Act, including the costs of regular contributions of employers to retirement, workmen's compensation, and welfare funds, and payments for leave earned with respect to such services;

(2) Communications;

(3) Utilities;

(4) The purchase of consumable supplies, including stationery;

(5) Printing and acquisition of printed and published materials;

(6) Travel and transportation expenses;

(7) Acquisition (by purchase or lease) and maintenance and repair of necessary equipment;

(8) Minor alterations in previously completed building space for use in the program under Title I of the Act;

(9) The rental of office space in privately and publicly owned buildings for use in the administration of the program under Title I of the Act, subject to the following provisions:

(i) The expenditures for the space are necessary for and properly related to the efficient administration of the program;

(ii) The State will receive the benefits of the expenditures during the period of occupancy commensurate with such expenditures;

(iii) The amounts paid are not in excess of comparable rental in the particular locality;

(iv) In the case of a publicly owned building, like charges are made to other State or local agencies occupying similar space for similar purposes;

(10) The acquisition of leasehold and other interests in land necessary for educational agencies to carry out approved projects successfully; and

(11) In exceptional cases, the construction of buildings, and the structural alteration of existing buildings.

(d) The expenditure of funds under Title I of the Act shall not be included in the determination of average per pupil expenditure pursuant to § 116.1(d) or in the determination of fiscal effort pursuant to § 116.45.

(e) None of the funds under Title I of the Act may be used for religious workshop or instruction.

§ 116.54 Retention of records.

(a) Each State educational agency and local educational agency receiving a grant under Title I of the Act shall keep intact and accessible all records supporting claims for such Federal grants or relating to the accountability of the grantee for the expenditure of such grants (1) for 3 years after the close of the fiscal year in which the expenditure was made, (2) until the State educational agency is notified that such records are not needed for administrative review, or (3) until the State educational agency is notified of the completion of the fiscal audit by the Department of Health, Education, and Welfare, whichever is the latest. All other records developed under a program or project under Title I of the Act shall be kept intact and accessible for a period of 3 years after the completion of the program or project.

(b) The records involved in any claim or expenditure which has been questioned shall be further maintained until necessary adjustments have been made and such adjustments have been reviewed and approved by the Department of Health, Education, and Welfare.

§ 116.55 Inventories of equipment.

(a) Each State and local educational agency shall maintain an inventory of all equipment it has acquired with funds under Title I of the Act and placed in the temporary custody of persons in a private school. Such inventories shall be maintained until the equipment is discharged from such custody and, if costing $100 or more per unit, for the expected useful life of the equipment or until its disposition.

(b) Each State educational agency and each local educational agency shall maintain inventories of all other equipment it has acquired with funds under Title I of the Act and costing $100 or more per unit for the expected useful life of the equipment or until its disposition.

(c) The records of inventories required by this section shall be subject to the retention requirements of § 116.54.

§ 116.56 Financial interest of officials.

No board or staff member of a State or local educational agency may participate in an administrative decision with respect to a grant program under Title I of the Act if such a decision appears likely to result in any benefit or remuneration, such as a royalty, commission, contingent fee, or brokerage fee, or other benefit to him or any member of his immediate family.

§ 116.57 Copyrights and patents.

(a) Any material of a copyrightable nature produced through a project with financial assistance under Title I of the Act shall not be copyrighted but shall be placed in the public domain.

(d) Any materials of a patentable nature produced through a project with financial assistance under Title I of the Act shall be subject to the provisions of 45 CFR Parts 6 and 8.

Dated: January 25, 1967.

[SEAL] HAROLD HOWE II,
U.S. Commissioner of Education.

Approved: February 2, 1967.

JOHN W. GARDNER,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 67-1462; Filed, Feb. 8, 1967; 8:45 a.m.]

PART 117—FINANCIAL ASSISTANCE FOR SCHOOL LIBRARY RESOURCES (WHICH FOR THE PURPOSES OF THIS PART MEANS BOOKS, PERIODICALS, DOCUMENTS, AUDIOVISUAL MATERIALS, AND OTHER RELATED LIBRARY MATERIALS), TEXTBOOKS, AND OTHER INSTRUCTIONAL MATERIALS

Grants made pursuant to the regulations set forth below are subject to the regulations in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare, and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (P.L. 88–352).

Part 117 reads as follows:

Subpart A—Definitions

Sec.
117.1 Definitions.

Subpart B—State or Department Plan—General Provisions

117.2 State or Department plan.
117.3 Allocation of school library resources, textbooks, and other printed and published instructional materials.
117.4 Selection of school library resources, textbooks, and other instructional materials.
117.5 Methods and terms of availability.
117.6 Coordination with public library programs.
117.7–117.10 [Reserved]

Subpart C—Availability of Title II Funds

117.11 Allotment of funds.
117.12 Acquisition.
117.13 Administration of the State plan.
117.14 Administration of the Departments of the Interior and Defense plans.
117.15–117.18 [Reserved]

Subpart D—Fiscal Procedures

117.19 State fiscal procedures.
117.20 Federal fiscal audits.
117.21 Transfer of funds to other State or local agencies.
117.22 Adjustments.
117.23 Proration of costs.
117.24 Maintenance of level of support.
117.25–117.29 [Reserved]

Subpart E—State Administration

117.30 State agency for administration.
117.31 Custody and expenditure of funds.
117.32 Duties and qualifications of professional personnel.
117.33 Officials not to benefit.
117.34 Continuing review by Commissioner of State administration.
117.35 Administration and evaluation.
117.36 Reports and records.
117.37 Retention of records.
117.38–117.42 [Reserved]

Subpart F—Payment Procedures

117.43 Financial reports.
117.44 Payment of funds under Title II of the Act.
117.45 Withholding of funds.
117.46 Reallotment.

AUTHORITY: The provisions of this Part 117 issued under sec. 703, 79 Stat. 57, as renumbered by secs. 201–207, 79 Stat. 36–37, and sec. 161, 80 Stat. 1204, 20 U.S.C. 883. Interpret or apply secs. 701, 703–705, 79 Stat. 55, 57–58, as renumbered by sec. 161, 80 Stat. 1204, 20 U.S.C. 821–827, 881, 883–885.

Subpart A—Definitions

§ 117.1 Definitions.

As used in this part—

(a) "Act" means the Elementary and Secondary Education Act of 1965 (Public Law 89–10), as amended.

(b) "Children" means those persons who are in attendance in elementary or secondary schools of a State which provide education or which comply with State compulsory school attendance laws or are otherwise recognized by some procedure customarily used in the State. The age limits are the permissible ages for attendance at the public elementary and secondary schools of the State, but children does not include persons enrolled in adult education courses, or in courses beyond grade 12.

(c) "Commissioner" means the U.S. Commissioner of Education.

(d) "Elementary school" means a day or residential school which provides elementary education, as determined under State law or as determined by the Department of the Interior or the Department of Defense.

(e) "Fiscal year" means the period beginning on July 1 and ending on the following June 30. (A fiscal year is designated by the calendar year of the ending date.)

(f) "Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as is recognized in a State as an administrative agency for its public elementary or secondary schools. It also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school program.

(g) "Public agency" means a legally constituted organization of government under public administrative control and direction.

(h) "Private elementary and secondary schools" means nonprofit or profit schools which provide elementary and secondary education as determined under State law, not beyond grade 12, and which are controlled by other than a public authority but which either comply with the State compulsory attendance laws or are otherwise recognized by some procedure customarily used in the State.

(i) "School library resources, textbooks, and other printed and published instructional materials" means: (i) School library resources are books, periodicals, documents, pamphlets, photographs, reproductions, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, including but not limited to those on discs and tapes; processed slides, transparencies, films, filmstrips, kinescopes, and video tapes, or any other printed and published materials of a similar nature made by any method now developed or hereafter to be developed, and which are processed and organized for use by elementary or secondary school children and teachers; (ii) "Textbooks" means books, reusable workbooks, or manuals, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students, a copy of which is expected to be available for the individual use of each pupil in such class or group; (iii) "Other printed and published instructional materials" are books, periodicals, documents, pamphlets, photographs, reproductions, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, including but not limited to those on discs and tapes; processed slides, transparencies, films, filmstrips, kinescopes, and video tapes, or any other printed and published materials of a similar nature made by any method now developed or hereafter to be developed, and which are not processed and organized for use by elementary or secondary school children and teachers. These terms include those printed and published instructional materials which are suitable for and are to be used by children and teachers in elementary and secondary schools and which with reasonable care and use may be expected to last more than 1 year. The terms do not include furniture or equipment.

(j) "Secondary school" means a day or residential school which provides secondary education, as determined under State law, or as determined by the Department of the Interior or the Department of Defense, except that secondary education does not include any education provided beyond grade 12.

(k) "Standards" means those measures (established by the State agency, the Department of the Interior, or the Department of Defense for administration of a plan under Title II of the Act or established by other authoritative groups or individuals and accepted for such administration) which are used for making determinations of the adequacy, quality, and quantity of school library resources, textbooks, and other printed and published instructional materials to be made available for the use of children and teachers in elementary and secondary schools.

(l) "State" means, in addition to the several States in the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(m) "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(n) "Teacher" means a person who is engaged in carrying out the instructional program of an elementary or secondary school, including a principal, guidance counselor, school librarian, or other member of the instructional or supervisory staff.

Subpart B—State or Department Plan—General Provisions

§ 117.2 State or Department plan.

(a) *Purpose.* A basic condition for the grant of Federal funds to a State or the payment of funds under Title II of the Act to the Department of the Interior or the Department of Defense is (1) a plan which meets the requirements of Title II of the Act in providing a program under which funds so granted or paid will be expended solely for the acquisition of school library resources, textbooks, and other printed and published instructional materials and the administration of the plan, and (2) an annual description of the projected program activities to be carried out under the plan during the forthcoming fiscal year.

(b) *Effects of a State plan.* The State plan, when approved by the Commissioner, shall constitute the basis on which Federal grants will be made, and the basis for determining the propriety of the expenditures of those funds.

(c) *Effect of a Department plan.* A plan, submitted by the Department of the Interior or by the Department of Defense when approved by the Commissioner, shall constitute the basis on which payments will be made to those Departments under Title II of the Act and the basis for determining the propriety of the expenditures of those funds by those Departments.

(d) *Amendments.* The administration of the program shall be kept in conformity with the approved plan. Whenever there is any material change in the content or administration of the program, or when there has been any material change in pertinent State law or in the organization, policies, or operations of the State agency affecting the program under the plan, the plan shall be appropriately amended.

(e) *Submission.* A plan and all amendments thereto shall be submitted to the Commissioner by a duly authorized officer of the State agency, the Department of the Interior, or the Department of Defense. The plan shall indicate the official or officials authorized to submit plan materials. The State agency shall, either directly or through arrangements with other State or local public agencies, act as the sole agency for the administration of the State plan.

(f) *Certificate by the State agency.* The State plan and all amendments thereto shall include as an attachment a certificate of the officer of the State agency authorized to submit the State plan to the effect that the State plan or amendment has been adopted by the State agency and that the State plan, or State plan as amended, will constitute the basis for operation and administration of the program under Title II of the Act.

(g) *Certificate of the State Attorney General or other appropriate State legal officer.* The State plan shall also include, as an attachment, a certificate by the appropriate State legal officer to the effect that the State agency named in the plan is the "State agency" required by section 203(a)(1) of the Act to have authority, either directly or through arrangements with other State or local public agencies, to act as the sole agency to submit the State plan; that such agency has authority under State law to carry out or arrange for the carrying out of the programs described therein; and that all the State plan provisions are consistent with State law.

(h) *Approval by the Commissioner.* The Commissioner will approve each plan, or modifications thereof, and the annual description of projected program activities which he determines meets the applicable requirements of the Act and regulations in this part, and will notify the applicant of the granting, conditioning, or withholding of approval in each such case. However, no final action with respect thereto, other than one of approval, will be taken by the Commissioner unless he first notifies the applicant of his proposed action and in connection therewith affords the applicant a reasonable opportunity for a hearing on whether the affected plan or modification meets such requirements.

(i) *Withholding.* Whenever the Commissioner, after reasonable notice and opportunity for a hearing, finds: (1) That the plan fails to comply with the requirements of the Act and the regulations in this part; or (2) that in the administration of the plan, there is a failure to comply substantially with any such provisions, the Commissioner will notify the applicant that said applicant will not be regarded as eligible to participate in the program under Title II of the Act until he is satisfied that there is no longer any such failure to comply.

(j) *Effective date of the plan.* Funds under Title II of the Act may not be applied to any expenditure (as defined in § 117.19(b)), prior to the date on which the State plan was received in substantially approvable form by the Commissioner.

§ 117.3 Allocation of school library resources, textbooks, and other printed and published instructional materials.

(a) *General.* The plan shall set forth the criteria used in determining need and the proportions of the allocation to be used for school library resources, textbooks, and other printed and published instructional material provided under Title II of the Act among the children and teachers in the elementary and secondary schools, which criteria shall incorporate the provisions of paragraphs (b) and (c) of this section.

(b) *Relative need.* The criteria shall, on the basis of a comparative analysis and the application of standards, as defined in paragraph (k) of § 117.1, establish the relative need as determined from time to time of children, as well as teachers, for school library resources, textbooks, and other printed and published instructional materials to be provided under the plan. Such criteria shall include priorities for the provision of such materials on the basis of several factors such as the requirements of elementary and secondary instruction, quality and quantity of such materials now available, requirements of children and teachers in special or exemplary instructional programs, the cultural or linguistic needs of children or teachers, the degree of economic need, and degree of previous and current financial efforts for providing such materials in relation to financial ability. The distribution of such resources, textbooks, and materials for children and teachers solely on a per capita basis does not satisfy this provision.

(c) *Equitable basis.* The criteria established under a State plan shall provide for the allocation of school library resources, textbooks, and other printed and published instructional materials in such a way as to provide assurance that, to the extent consistent with State law, such resources, textbooks, and materials are provided on an equitable basis for the use of children and teachers in private elementary and secondary schools in the State which comply with the compulsory attendance laws of the State or are otherwise recognized by it through some procedure customarily used in the State. However, said equitable provision shall not be effectuated by means of transfer of funds to private schools or purchase by them of such library resources, textbooks, and materials.

§ 117.4 Selection of school library resources, textbooks, and other instructional materials.

(a) *Criteria.* Each plan shall set forth the specific educational and other criteria to be used (1) in selecting the school library resources, textbooks, and other instructional materials to be made available to children and teachers under Title II of the Act and (2) as the basis for determining the proportions of the allotment for each fiscal year which will be spent for the acquisition of (i) school library resources, (ii) textbooks and (iii) other printed and published instructional materials. The ultimate responsibility for the selection under those criteria of all school library resources, textbooks, and other instructional materials for the use of children and teachers in public and private elementary and secondary schools in a State shall be that of a State or local public agency. If proportions for the three categories of materials are changed significantly, the plan should be so amended.

(b) *Public control.* Each plan shall provide that title to, and control and administration of the use of, school library resources, textbooks, and other instructional materials acquired under Title II of the Act shall vest only in a public agency (as defined in § 117.1(g)), or the United States, or Department or Agency thereof. Each State plan shall set forth the method by which such resources, textbooks, and other instructional materials acquired under Title II of the Act will be limited to those approved by an appropriate State or local educational authority or agency for use, or to those which are used, in a public elementary or secondary school of the State.

(c) *Religious worship or instruction.* Each plan shall provide that funds under Title II of the Act will not be used for religious worship or instruction, or for school library resources, textbooks, or materials to be used in such worship or instruction.

§ 117.5 Methods and terms of availability.

(a) *General.* Each plan shall set forth the methods and terms by which the school library resources, textbooks, and other instructional materials acquired under Title II of the Act will be made available for the use of children and teachers in the elementary and secondary schools. Each plan shall contain an assurance that funds provided under Title II of the Act will be applied for the benefit of children and teachers rather than inure to the enrichment or benefit of any private school. With respect to children and teachers in private schools, each State plan shall provide that (1) library resources, textbooks, and other printed and published instructional materials are to be made available to children and teachers and not to institutions; (2) such materials are to be made available on a loan basis only; (3) a public agency will retain title to, and control and administration of the use of, such materials; (4) such materials must be limited to those which have been approved by an appropriate State or local educational agency or authority for use, or, are used in a public elementary or secondary school of that State; and (5) books and materials must not supplant those being provided children but must supplement library resources, textbooks, and other instructional materials to assure that the legislation will furnish increased opportunities for learning. It shall also assure that the Federal funds made available under this title will not be used to supplant or duplicate, inappropriately, functions of the public library system of the State.

(b) *Control of materials.* Each State plan shall contain an assurance that school library resources, textbooks, and other printed and published instructional materials acquired under Title II of the Act shall be available to children and teachers in elementary and secondary schools on a loan basis only and that there will be a proper accounting of such school library resources, textbooks, and other printed and published instructional materials. Each plan shall provide for the control, recall, and replacement of school library resources, textbooks, and other printed and published instructional materials. The public agency having control shall impose responsibility upon the children and teachers who borrow school library resources, textbooks, and other printed and published instructional materials (for loss, damage, failure to return when required, or other violations of the terms and conditions of the loan) which is comparable to that imposed upon borrowers of similar items purchased with funds derived from other sources.

(c) *Accessibility of loaned materials.* Each State plan shall provide, unless prohibited from doing so by State law, that school library resources, textbooks, and other printed and published instructional materials acquired with funds under Title II of the Act will be made available for the use of children and teachers in private elementary and secondary schools on an equitable basis. The State plan shall provide for the maintenance of catalogs or lists of instructional materials acquired under the State plan or such other system or systems as may be approved by the Commissioner which will assure the reasonable accessibility and availability of instructional materials to children and teachers in both public and private schools. Such catalogs or lists may be limited in content, for example, to instructional materials designed for children with special needs or to instructional materials supporting particular areas of curriculum and which are not otherwise generally available to the affected children and teachers. Such catalogs or lists or other systems may be maintained on the basis of such limited and defined geographical areas as may be appropriate to assure distribution of materials on a feasible basis. Another method may be the use of a central depository system. The circulation of such instructional materials shall be subject to such restrictions as may be required to maintain an equitable distribution thereof among the children and teachers. The loan terms should be based on educational principles of service to instructional programs so that the children and teachers for whom the school library resources, textbooks, and other instructional materials are selected will not be deprived of their use when needed.

(d) *Charge for use.* No charge may be levied against children and teachers for the use of any school library resources, textbooks, and other instructional materials acquired under Title II of the Act.

(e) *Inventory.* The public agency in which title to school library resources, textbooks, and other printed and published instructional materials is vested, and the Department of the Interior and the Department of Defense, shall indicate ownership by appropriate marking of each item in a permanent manner and will maintain an inventory record of such items, revised annually. The inventory records shall be maintained for the useful life of such items, and shall be made available to the Commissioner upon request.

(f) *Methods of inventorying.* The methods for inventorying and maintaining records of such materials employed by the public agency retaining title will be subject to the approval of the State agency administering the plan. Inventory records of such materials shall be compiled and maintained by the public agency retaining title and actual administrative control through the use of publicly employed personnel. The methods of inventorying shall include appropriate provision for substantiating the inventories by on-site inspection. The State agency administering the plan shall make an annual report to the Commissioner of the results of such inventorying and recordkeeping procedures as may be employed, adopted, or prescribed, including the nature and type of any discrepencies and the manner of disposition of same. The State plan shall set forth a policy for moving items from inventory, by procedures consistent with established State or local public agency determinations relative to loss, obsolescence, or rate of deterioration of school library resources, textbooks, and other instructional materials.

§ 117.6 Coordination with public library programs.

The State plan shall contain an assurance that, in order to secure the effective and efficient use of Federal funds, and to avoid duplication of effort, there has been and will be appropriate coordination at both State and local levels between the program carried out under Title II of the Act with respect to school library resources and any program carried out under the Library Services and Construction Act (20 U.S.C. ch. 16).

§§ 117.7–117.10 [Reserved]

Subpart C—Availability of Title II Funds

§ 117.11 Allotment of funds.

(a) *State allotment.* The Federal Government will pay from each State's allotment amounts equal to the sums expended by the State under an approved State plan for (1) the acquisition of school library resources, textbooks, and other printed and published instructional materials for the use of children and teachers in public and private elementary and secondary schools in the State; and (2) administration of the State plan. In no case will the amount paid for administration of the State plan for any fiscal year exceed an amount equal to 5 percent of the total amount of the projects approved by the State agency under Title II of the Act for that year or $50,000 whichever is greater.

(b) *Reduction in State allotment.* In any State which has an approved State plan and in which no State agency is authorized by law to provide school library resources, textbooks, and other printed and published instructional materials for the use of children and teachers in any one or more elementary or secondary schools in that State, the Commissioner will arrange for the provision on an equitable basis of such resources, textbooks, and other materials for the use of such children and teachers. In such an event, the Commissioner will pay the cost thereof for any fiscal year out of the State's allotment.

(c) *Allotment to the Departments of the Interior and Defense.* Such amount shall be allotted to the Secretary of the Interior as is necessary for such assistance for children and teachers in elementary and secondary schools operated for Indian children by the Department of the Interior, and to the Secretary of Defense the amount necessary for such assistance for children and teachers in the overseas dependents schools of the Department of Defense.

§ 117.12 Acquisition.

Acquisition of school library resources, textbooks, and other printed and published instructional materials in which there may be financial participation under Title II of the Act means the purchase, lease-purchase, or straight lease of such resources, textbooks, and materials and includes the necessary and essential cost of ordering, processing, and cataloging such resources, textbooks, and materials and delivery of them to the initial place at which they are made available for use. Funds under Title II of the Act are not available for the rebinding or repair of such resources, textbooks, and materials.

§ 117.13 Administration of the State plan.

(a) *Functions.* Funds allotted to States under Title II of the Act are available, up to the limits specified in § 117.11, for the administration of the State plan. Of the funds so made available for administration of the State plan, appropriate amounts shall be made available to local educational agencies for responsibilities assigned by the State to such local educational agencies for the making of loaned materials accessible in accordance with § 117.5(c). The administration of the State plan involves functions such as:

(1) The development of short- and long-term policy for making school library resources, textbooks, and other printed and published instructional materials available for the use of children and teachers in the elementary and secondary schools of a State;

(2) The development, revision, dissemination, and evaluation of standards relating to the selection, acquisition, and use of school library resources, textbooks, and other printed and published instructional materials;

(3) State supervisory services and evaluation of programs for the acquisition and use of school library resources, textbooks, and other printed and published instructional materials;

(4) Inventorying of acquisitions made under Title II of the Act and the maintaining of other requisite records;

(5) The control of loaned materials in accordance with section 117.5(c); and

(6) The rendering of such reports as the Commissioner may require.

(b) *Eligible expenditures for administration of the State plan.* Funds under Title II of the Act may be used for only those additional expenses incurred as a direct result of administration of the State plan and include such categories as:

(1) Salaries, wages, and other personal service costs of permanent and temporary staff;

(2) Communications;

(3) Utilities;

(4) Consumable office supplies, including stationery;

(5) Printing and the acquisition of printed and published materials for use of administrative and supervisory staff;

(6) Travel and transportation expenses;

(7) Acquisition (including rental), maintenance, or repair of office equipment, or that equipment needed for supervisory and demonstration functions, for use of the administrative and supervisory staff;

(8) Minor alterations in previously completed building space used or to be used for administration of the program under Title II of the Act which would be needed to make effective use of equipment acquired for administration. Excluded are building construction, structural alterations to buildings, building maintenance, repair, or renovation.

(9) Fair rental of office space in privately or publicly owned buildings, subject to the following provisions:

(i) The expenditures for the space are necessary and properly related to the efficient administration of the program;

(ii) The State will receive the benefits of the expenditures during the period of occupancy commensurate with such expenditures;

(iii) The amounts paid are not in excess of comparable rental in the particular locality;

(iv) Expenditures represent a current cost;

(v) In the case of a publicly owned building, like charges are made to other State agencies occupying similar space for similar purposes.

§ 117.14 Administration of the Departments of the Interior and Defense plans.

An amount not to exceed 5 percent of the funds made available to the Departments of the Interior and Defense shall be available for the administration of the plans of the Departments, respectively, in a manner consistent with § 117.13, except that funds will not be available for the rental of facilities.

§§ 117.15–117.18 [Reserved]

Subpart D—Fiscal Procedures

§ 117.19 State fiscal procedures.

(a) *State administration.* The State plan shall prescribe such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds under Title II of the Act. Accounts and supporting documents relating to the program under Title II of the Act shall be adequate to permit an accurate and expeditious audit of the program.

(b) *Expenditures.* For the purpose of the regulations in this part, the expenditure (as hereafter defined) of funds under Title II of the Act shall occur prior to the end of the fiscal year in which such funds are to be available. The expenditures shall be deemed to have occurred upon the date of execution of documentary evidence of binding commitments for the acquisition of goods and services acquired by purchase order or contract, including a binding commitment by a State agency to pay a local educational agency a fixed charge for the ordering and processing of instructional materials. However, personal services, rental, and travel are expenditures on the basis of the time when the services are rendered or received, the rental facilities are used, and the travel performed, rather than on the basis of entering into a binding commitment. All such binding commitments shall be liquidated by the end of the fiscal year following the fiscal year in which the binding commitments were entered into or the end of such additional period of time as the Commissioner may grant on the basis of a request from the State.

(c) *Audit of other participating agencies.* All expenditures of funds under Title II of the Act shall be audited either by the State or by other appropriate auditors. The State plan shall indicate how the accounts of those other State and local public agencies participating under the State plan through arrangements with the sole State agency for administration will be audited; and, when such an audit is to be carried out, how the State agency will secure information necessary to assure proper use of any funds under Title II of the Act turned over to such other agency or agencies for expenditure. The State plan shall name the State agency in which the reports of such audits will be maintained.

§ 117.20 Federal fiscal audits.

The State agency's program expenditure records are to be audited by the Federal Government to determine whether the State agency has properly accounted for Federal funds.

§ 117.21 Transfer of funds to other State or local agencies.

The State plan shall set forth the policies and procedures to be used in the payment of funds to other State or local public agencies by the State agency administering the State plan, either as reimbursement for actual expenditures, or as an advance prior to expenditures, for the acquisition of school library resources, textbooks, and other printed and published instructional materials, and for administration of the State plan.

§ 117.22 Adjustments.

The State agency in its maintenance of program expenditures, accounts, records, and reports shall make promptly any necessary adjustments in its records to reflect refunds, credits, underpayments, or overpayments, as well as any adjustments resulting from Federal or State administrative reviews and audits. Such adjustments shall be set forth in the State agency's financial reports filed with the Commissioner.

§ 117.23 Proration of costs.

Funds under Title II of the Act are available only with respect to that portion of any expenditure which is attributable to an activity under the State plan. The State plan shall specify the basis for identifying and the method to be used in prorating expenditures attributable solely to State plan activities. The State agency shall include in the description of its projected program submitted to the Commissioner for each fiscal year its prorated expenditures for salaries attributable to State plan activities. The State agency must also main-

tain records (documented on a before- and after- the fact basis) to substantiate the proration of expenditures for applicable items such as salaries, travel, rent, and equipment.

§ 117.24 Maintenance of level of support.

The State plan shall set forth the policies and procedures designed to assure that funds made available under Title II of the Act for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of State, local, and private school funds that would in the absence of such funds be made available for school library resources, textbooks, and other printed and published instructional materials, and in no case supplant such State, local, and private school funds. Such policies and procedures shall take into consideration the total amount of State, local, and private school funds budgeted for expenditure in the current fiscal year for the acquisition of school library resources, textbooks, and other printed and published instructional materials; as compared with the total amount of State, local, and private school funds actually expended in each of the two most recent fiscal years for which the information is available for the acquisition of school library resources, textbooks, and other printed and published instructional materials.

§§ 117.25–117.29 [Reserved]

Subpart E—State Administration

§ 117.30 State agency for administration.

(a) *Designation.* The State plan shall give the official name of the agency which will be, either directly or through arrangements with State or local public agencies, the sole agency for administering the plan.

(b) *Authority and organization.* The State plan shall set forth the authority of the State agency under State law to submit the plan and to administer and supervise the programs set forth therein, including a description of both the legal and functional relationships between the State agency and other State and local public agencies for the purpose of carrying out the State plan. Citations to, or copies of, all directly pertinent statutes and interpretations of law made by appropriate State officials, whether done by regulations, policy statement, opinion of an authorized State legal officer, or a court decision, shall be furnished as part of the plan or in the appendix. All copies must be certified as correct by an appropriate official.

(c) *Staff for administration.* The State plan shall describe, by chart or otherwise, the organization of the State agency staff for administration of the State plan. The lines of authority within the administrative unit or units responsible for the programs under the plan shall be shown, together with pertinent administrative arrangements or relationships of such unit or units to the rest of the State agency, and to other State and local public agencies utilized to carry out the State plan.

§ 117.31 Custody and expenditure of funds.

The State plan shall designate the officer or officers who will receive, provide for the custody of all funds to be expended, and authorized expenditures.

§ 117.32 Duties and qualifications of professional personnel.

(a) *Staff.* The State plan shall describe the duties of State administrative and supervisory positions, existing and proposed, under the State plan. The State plan shall also set forth the qualifications of all professional administrative and supervisory positions under the State plan. If State statutes or regulations establish such positions and give such information, the plan shall so state.

(b) *Advisory committees.* If State advisory committees are used with respect to one or more aspects of the State plan, the plan shall describe the membership, method of establishment, and duties, including the procedures for the payment of the committees' expenses, if any.

§ 117.33 Officials not to benefit.

No member of the staff of a State or local educational agency may participate in the administration of a program under Title II of the Act, and no person may serve on an advisory committee established to assist either with planning for such program or with its administration, if such person will receive any benefit or remuneration in the form of a commission, percentage, contingent fee, brokerage fee, or otherwise, as a result of any contract for the acquisition of school library resources, textbooks, or other printed and published instructional materials under such a program or as a result of the granting or withholding of approval of the acquisition or use of any school library resources, textbooks, or other printed and published instructional material under Title II of the Act. The State agency administering the State plan shall take such action as is necessary to assure itself that preferential treatment on the basis of authorship or other personal interests will be avoided in relation to the sale or distribution of school library resources, textbooks, and other printed and published instructional materials under Title II of the Act.

§ 117.34 Continuing review by Commissioner of State administration.

In order to assist the State agency in adhering to statutory requirements and to the provisions of its approved State plan, the Commissioner will conduct periodic review of the administration of programs under Title II of the Act.

§ 117.35 Administration and evaluation.

Provision shall be made in the State plan and the plans of the Department of the Interior and the Department of Defense for both administrative review and evaluation by the Department or the State agency of the program and operations under the plan at least annually for the purpose of appraising their scope, status, and administration. Such evaluation will be done in relation to the criteria used for equitable distribution and the identifying and serving of needs and will include the review, redefinition, and refinement of meaningful standards as to adequacy, quality, and quantity of school library resources, textbooks, and other printed and published instructional materials which are selected and distributed, and the effectiveness in making such resources, textbooks, and other materials available for the use of children and teachers in elementary and secondary schools. The State agency shall include a report of such administrative review and evaluation in the annual report of the State agency.

§ 117.36 Reports and records.

The State plan and the plans of the Department of the Interior and the Department of Defense shall provide that the Department or the State agency will participate in such periodic consultations and will make such reports to the Commissioner at such time, in such form, and containing such information as the Commissioner may consider necessary to enable him to perform his duties under the Act and will keep such records and afford such access thereto, and will comply with such other requirements, as the Commissioner may find necessary to assure the correctness and verification of such reports.

§ 117.37 Retention of records.

(a) *General rule.* The State agency shall provide for keeping accessible and intact all records supporting claims for funds under Title II of the Act or relating to the accountability of the grantee or funded agency for expenditure of such funds.

(1) For 3 years after the close of the fiscal year in which the expenditure was made;

(2) Until the State agency is notified that such records are not needed for program administration review; or

(3) Until the State agency is notified by the Department of Health, Education, and Welfare of a completion of the fiscal audit, whichever is latest.

(b) *Questioned expenditure.* The records involved in any claim or expenditure which has been questioned shall be maintained until necessary adjustments have been reviewed and cleared by the Department of Health, Education, and Welfare.

(c) *Inventories of equipment for administration of the State plan.* Where equipment which costs $100 or more per unit is purchased by the State with Federal funds for use in administration of the State plan, inventories and other records supporting accountability shall be maintained for the useful life of such equipment or until the State agency is notified of the completion of the review and audit of the Department of Health, Education, and Welfare covering the dis-

position of such equipment, whichever is sooner. Records supporting accountability of school library resources, textbooks, and other printed and published instructional materials shall be maintained in accordance with § 117.5.

§§ 117.38–117.42 [Reserved]

Subpart F—Payment Procedures

§ 117.43 Financial reports.

Reports. Each State agency shall submit, in accordance with procedures established by the Commissioner:

(a) Following the end of the fiscal year, a report of the total expenditures made under the plan during the fiscal year; and

(b) Such other reports as are periodically needed to account properly for funds.

§ 117.44 Payment of funds under Title II of the Act.

Funds under Title II of the Act to pay for amounts expended by a State in carrying out its State plan will be limited to the amount necessary to meet current needs.

§ 117.45 Withholding of funds.

Neither the approval of the State plan nor any payment to the State pursuant thereto shall be deemed to waive the right or duty of the Commissioner to withhold funds by reason of the failure of the State to observe, before or after such administrative action, any Federal requirements.

§ 117.46 Reallotment.

(a) *In general.* The amount of any State allotment under Title II of the Act for any fiscal year which the Commissioner determines will not be required for such fiscal year shall be available for reallotment, from time to time, on such dates during such year as the Commissioner may fix, to other States in proportion to the original allotments to such States under Title II of the Act for that year but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Commissioner estimates such State needs and will be able to use for such year; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced.

(b) *Statements of anticipated need.* In order to provide a basis for reallotment by the Commissioner under Title II of the Act, each State agency administering a program under Title II of the Act, shall if requested, submit to the Commissioner, by such date or dates as he may specify, a statement or statements showing the anticipated need during the current fiscal year for the amount previously allotted, or any amount needed to be added thereto. Such further information as the Commissioner may request for the purpose of making reallotments shall be reflected in such statements.

(c) *Lack of carryover.* No allotment (or reallotment) of the funds may be carried over for use during the subsequent fiscal year.

Dated: January 25, 1967.

[SEAL] HAROLD HOWE II,
U.S. Commissioner of Education.

Approved: February 2, 1967.

JOHN W. GARDNER,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 67-1463; Filed, Feb. 8, 1967; 8:45 a.m.]

PART 118—SUPPLEMENTARY EDUCATIONAL CENTERS AND SERVICES

Grants made pursuant to the regulations set forth below are subject to the regulation in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare, and approved by the President to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (P.L. 88–352).

Part 118 is revised, primarily to reflect the amendments to the Elementary and Secondary Education Act of 1965 that are contained in P.L. 89–750, to read as follows:

Subpart A—Definitions

Sec.
118.1 Definitions.

Subpart B—Project Proposals

118.2 General provisions.
118.3 Designation and certification of agency for administration.
118.4 Purposes.
118.5 Evidence of involvement of cultural and educational resources.
118.6 Administration and reporting.
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118.9 Qualifications of professional personnel.
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118.11 Participation of children enrolled in nonprofit private schools.
118.12 Submission of project proposal.
118.13 Amendments.

Subpart C—Approval of Project Proposals

118.14–118.18 [Reserved]
118.19 Criteria for evaluation of project proposals.
118.20 Disposition.
118.21–118.23 [Reserved]

Subpart D—Federal Financial Participation and Payment Procedures

118.24 Effective date of approved project.
118.25 Payment procedures.
118.26 Effect of Federal payments.
118.27 Extent of participation under Title III of the Act.
118.28 Availability of funds for approved projects.
118.29 Fiscal and auditing procedures.
118.30 Adjustments.
118.31 Disposal of records.
118.32 Cooperative agreements.
118.33 Eligible expenditures.
118.34 Funds not expended.
118.35 Reapportionment.
118.36–118.39 [Reserved]

Subpart E—Equipment and Construction

118.40 Acquisition and maintenance of equipment.
118.41 Grants for construction.
118.42 Accounting procedures for construction projects.
118.43 Recovery of payments.
118.44 Leasing facilities.
118.45 Shared use of supplementary educational centers.
118.46 Patents and copyrights.
118.47–118.48 [Reserved]

Subpart F—Review Provisions

118.49 State educational agency review and recommendations.
118.50 Continuing administrative review and program evaluation.

AUTHORITY: The provisions of this Part 118 issued under sec. 703, 79 Stat. 57, as renumbered by sec. 161, 80 Stat. 1204, 20 U.S.C. 883. Interpret or apply secs. 301–308, 79 Stat. 39–44, and secs. 701, 703–705, 79 Stat. 55, 57–58, as renumbered by sec. 161, 80 Stat. 1204, 20 U.S.C. 841–848, 881, 883–885.

Subpart A—Definitions

§ 118.1 Definitions.

As used in this part:

(a) "Act" means the Elementary and Secondary Education Act of 1965, Public Law 89–10, as amended.

(b) "Base period" means the 3-year period immediately preceding the period covered by a project proposal.

(c) "Commissioner" means the U.S. Commissioner of Education.

(d) "Construction" means (1) the erection of new or expansion of existing structures, and the acquisition and installation of fixed or built-in equipment therefor; (2) the acquisition of existing structures not owned by the agency making application for assistance under Title III of the Act; (3) the remodeling or alteration (including the acquisition, installation, modernization, or replacement of fixed or built-in equipment) of existing structures; or (4) a combination of any two or more of the foregoing.

(e) "Cultural and educational resources" includes State educational agencies, institutions of higher education, nonprofit private schools, public and nonprofit private agencies such as libraries, museums, musical and artistic organizations, philanthropic organizations, and educational radio and television.

(f) "Department" means the U.S. Department of Health, Education, and Welfare.

(g) "Elementary school" means a day or residential school which provides elementary education, as determined under State law.

(h) "Equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audiovisual instructional materials, and books, periodicals, documents, and other related materials. Equipment does not include supplies, which is defined in paragraph (q) of this section.

(i) "Exemplary educational programs" means educational programs or activities designed to serve as models for regular school programs.

(j) "Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function, as defined in paragraph (n) of this section, for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as is recognized in a State as an administrative agency for its public elementary or secondary schools. That term also includes any other public institution or agency of any State or political subdivision thereof having administrative control and direction of a public elementary or secondary school.

(k) "Nonprofit," as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder of individual.

(l) "Project proposal" means an application for a grant or payment for the planning, establishing, operating or maintaining of, a supplementary educational center or service submitted to the Commissioner for his approval under Title III of the Act.

(m) "Secondary school" means a day or residential school which provides secondary education, as determined under State law, except that it does not include education beyond grade 12.

(n) "Service function" means an educational service which is performed by a legal entity, such as an intermediate agency, whose jurisdiction does not extend to the whole of the State and which is authorized to provide consultative, advisory, or educational program services to public elementary or secondary schools, or which has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools, rather than a service which is performed by a cultural or educational resource.

(o) "State" includes, in addition to the several States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(p) "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(q) "Supplies" means those nonequipment items which are consumed in use or which may not reasonably be expected to last longer than 1 year.

(r) "Works of art" means those items, which may be in the nature of fixtures, that are incorporated in school facilities primarily because of their esthetic value. The cost of a work of art which is in the nature of a fixture shall be the estimated additional cost of incorporating those special esthetic features which exceed the general requirements of excellence of architecture and design.

Subpart B—Project Proposals

§ 118.2 General provisions.

A grant under Title III of the Act will be made to a local educational agency or agencies, or payment will be made to the Department of the Interior or the Department of Defense, only upon submission of an application (in the form of a project proposal) for such a grant or payment on such forms as the Commissioner provides and upon approval of the application by the Commissioner.

§ 118.3 Designation and certification of agency for administration.

(a) *Designation.* Each project proposal and amendment thereto shall give the official name of the applicant, which shall be the agency responsible for carrying out the project.

(b) *Certification.* Each such proposal or amendment shall include as an attachment a certificate by the officer authorized to make and submit the proposal, or amendment, on behalf of the applicant to the effect that the proposal or amendment has been adopted by the applicant.

§ 118.4 Purposes.

(a) In order to stimulate and promote the acceptance of innovative and exemplary educational programs into educational practices, grants, and payments will be made under Title III of the Act for supplementary educational centers and services through which such programs may be carried out. Grants and payments may also be made for planning and taking other steps leading to the development of such programs. Priority will be given to assisting those programs which are exemplary and demonstrate educational innovation and which may serve as models for adoption as regular school programs. The provision of such programs may include, if necessary for the success of the project, the acquisition of equipment and supplies, and, in the case of local educational agencies if essential to the success of the project, the leasing or construction of facilities.

(b) Grants and payments may be made for innovative and exemplary programs in the following categories:

(1) Comprehensive guidance and counseling, remedial instruction, and school health, physical education, recreation, psychological, and social work services designed to enable and encourage persons to enter, remain in, or reenter educational programs, including the provision of special educational programs and study areas during periods when schools are not regularly in session;

(2) Comprehensive academic services, and, where appropriate, vocational guidance and counseling, for continuing adult education;

(3) The development and conduct of exemplary educational programs, including dual-enrollment programs for the purpose of stimulating the adoption of improved or new educational programs, and programs for conducting, sponsoring, or cooperating in educational research and demonstration programs and projects such as (i) establishing and maintaining curriculum research and innovation centers to assist in locating and evaluating curriculum research findings, (ii) discovering and testing new educational ideas (including new uses of printed and audio-visual media) and more effective educational practices, and putting into use those which show promise of success, and (iii) studying ways to improve the legal and organizational structure for education, and the management and administration of education, in the schools of the State;

(4) Specialized instruction and equipment for students interested in studying advanced scientific subjects, foreign languages, and other academic subjects which are not taught in the local schools or which can be provided more effectively on a centralized basis, or specialized instruction and equipment for persons who are handicapped or of preschool age;

(5) The making available on a temporary basis, of modern educational equipment and especially qualified personnel, including artists and musicians, to public and other nonprofit schools, organizations, and institutions;

(6) The developing, producing, and transmitting of radio and television programs for classroom and other educational use;

(7) The providing of special educational and related services to persons who are in or from rural areas or who are or have been otherwise isolated from normal educational opportunities, including, where appropriate, the providing of mobile educational services and equipment, special home study courses, radio, television, and related forms of instruction, and visiting teachers programs;

(8) Other specially designed educational programs which meet the purposes of Title III of the Act.

§ 118.5 Evidence of involvement of cultural and educational resources.

Each project proposal shall include evidence that representatives of appropriate cultural and educational resources have participated in the planning, and will participate in the operation and evaluation, of the project. No such proposal will be approved unless the Commissioner determines that the degree of participation by such resources is sufficient to assure that the proposed project will be effective in substantially increasing the educational and cultural opportunities for persons in the area to be served.

§ 118.6 Administration and reporting.

(a) *Administration.* Each project shall provide that the activities and services for which assistance under Title III of the Act is sought will be administered by or under the supervision of the applicant.

(b) *Reports and records.* Each project proposal shall provide for the making of an annual report and such other reports, in such form, and containing such information, as the Commissioner may reasonably require to carry out his func-

tions under Title III of the Act and to determine the extent to which the use of funds provided under that Title has been effective in improving the educational opportunities of persons in the area served. The applicant shall keep such records, and afford such access thereto, as the Commissioner may find necessary to assure the correctness of such reports.

§ 118.7 Present programs.

(a) *Programs during the base period.* Each project proposal shall contain a description of those programs of a nature similar to the project being proposed which were carried on during the base period in the geographical area to be served.

(b) *Maintenance of the level of funds made available.* Each project proposal shall set forth policies and procedures under the grant to insure that services and activities of the type for which Federal assistance is being sought will not be curtailed, and that Federal funds made available for the project will be so used as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, have been made available by the grantee from State and local public sources for the purposes described in section 303 of the Act, and in no case supplant such funds.

§ 118.8 Proposed services.

Each project proposal shall describe the program to be provided with funds made available under Title III of the Act and how it will meet the educational and cultural needs of persons in the geographical area to be served. It shall also describe the manner in which the project would supplement or improve programs of the same type that were carried on during the base period in the geographical area to be served, or state that it covers programs of a type that were not so carried on.

§ 118.9 Qualifications of professional personnel.

Each project proposal shall set forth minimum acceptable qualifications, including educational background and experience, of all supervisory, teaching, and consulting personnel so as to assure the Commissioner that the best available talents will be used for proposed assignments.

§ 118.10 Adequacy of facilities.

Each project proposal shall describe the facilities available for the project. If a project proposal of a local educational agency calls for the acquisition, leasing, remodeling, or constructing of facilities, it must show how and why such action is essential for the success of the project.

§ 118.11 Participation of children enrolled in nonprofit private schools.

Each project proposal shall provide for a degree of participation by or benefit to children who are enrolled in nonprofit private schools in the area to be served which is consistent with the number of such children. Wherever practicable, supplementary educational services, including broadened instructional offerings made available to children enrolled in nonprofit private schools, shall be provided on publicly controlled premises. Provisions for supplementary educational services for children enrolled in private nonprofit schools shall not include the paying of salaries of teachers or other employees of such schools except for services performed outside their regular hours of duty and under public supervision and control, nor shall they include the financing of regular school instruction for nonpublic schools, the leaving of equipment on private school premises, or the construction of facilities for such schools. None of the funds made available under Title III of the Act may be used for religious worship or sectarian instruction.

§ 118.12 Submission of project proposal.

Project proposals shall be submitted to the Commissioner on or before such dates as he establishes. Each project proposal, except in the cases of projects proposed by the Department of Defense or the Department of the Interior, must, on or before its submission to the Commissioner, also be submitted to the State educational agency for its review and recommendation.

§ 118.13 Amendments.

Whenever there is any material change in the content or administration of an approved project, or in the organization, policies, or operations of the local educational agency affecting an approved project, the project proposals shall be appropriately amended. The amendment may be treated as a new project proposal, and, if so, will be considered in the next round of applications.

§§ 118.14–118.18 [Reserved]

Subpart C—Approval of Project Proposals

§ 118.19 Criteria for evaluation of project proposals.

(a) *General criteria.* Each project proposal will be evaluated in terms of educational significance, project design, qualifications of personnel designated or intended to carry out the project, adequacy of designated facilities, economic efficiency, feasibility with regard to the needs and resources of the area to be served, and priorities and other criteria that may be adopted with the advice of the Advisory Committee on Supplementary Educational Centers and Services and announced from time to time by the Commissioner. In approving applications under Title III of the Act for grants for any fiscal year beginning after June 30, 1967, the Commissioner will give special consideration to the application of any local educational agency which is making a reasonable tax effort but which is nevertheless unable to meet critical educational needs, including preschool education for 4- and 5-year-olds, because some or all of its schools are seriously overcrowded (as a result of growth or shifts in enrollment or otherwise), obsolete, or unsafe.

(b) *Criteria to assure equitable distribution of assistance within each State.* In order to assure equitable distribution of assistance under Title III of the Act within each State, the Commissioner will also evaluate all project proposals pursuant to the following criteria:

(1) The projects assisted will be accessible to large numbers of persons within the State;

(2) The projects so assisted will be accessible to persons within the various regions within the State to a degree commensurate with the population distribution in such regions;

(3) The projects assisted will be appropriate to the relative needs of various population groups within the State;

(4) The relative financial ability of communities or areas to provide the proposed services and activities has been considered in the development of the projects; and

(5) The resources of particular local educational agencies, in terms of personnel, facilities, administrative policies, and other factors, will, with effective coordination with relevant educational and cultural resources, be adequate to provide the proposed services and activities.

(c) *Criteria to assure equitable distribution of assistance to children in overseas dependents schools of the Department of Defense and Indian children in elementary and secondary schools operated by the Department of the Interior.* With respect to schools operated by the Department of Defense and the Department of the Interior, the Commissioner will evaluate such proposals pursuant to the following criteria:

(1) The projects assisted will be accessible to large numbers of eligible persons;

(2) The projects shall be so distributed geographically as to allow, to the extent practicable, participation by the various eligible groups within the geographical jurisdiction of the applicant;

(3) The projects assisted will be appropriate to the relative needs of various groups within the jurisdiction of the applicant; and

(4) The resources available to the particular Department, in terms of personnel, facilities, administrative policies and other factors, will, with effective coordination with relevant educational and cultural resources, be adequate to provide the proposed services and activities.

§ 118.20 Disposition.

The Commissioner will, on the basis of an evaluation of a project proposal pursuant to § 118.19, (a) approve the project proposal in whole or in part, (b) disapprove the project proposal, or (c) defer action on the project proposal for such reasons as lack of funds or a need for further evaluation. Any deferral or disapproval of the project proposal will not preclude its reconsideration or resubmission at a later date. The Commissioner will notify the applicant and, where appropriate, the respective State educational agency in writing of the disposition of the project proposal. For projects for local educational agencies approved by

the Commissioner, the grant award document will include the approved budget and the terms and conditions upon which the grant is to be made.

§§ 118.21–118.23 [Reserved]

Subpart D—Federal Financial Participation and Payment Procedures

§ 118.24 Effective date of approved project.

The effective date of any approved project shall be the date indicated in the grant award document or in the case of the Department of the Interior or the Department of Defense the date of issuance of the notification of approval. There will be no financial participation under Title III of the Act with respect to expenditures made prior to the effective date of such grant award document.

§ 118.25 Payment procedures.

From the amounts apportioned to the States and the amounts made available to the Department of the Interior and the Department of Defense, the Commissioner will pay to each grantee in a State, or to the Department of the Interior or to the Department of Defense, either in advance or by way of reimbursement, amounts equal to the total allowable expenditures by the recipient under an approved project. Payments will be made in a manner consistent with the nature of the activities and the services under the project.

§ 118.26 Effect of Federal payments.

Neither the approval of the project proposal nor any payment to the grantee shall be deemed to waive the right or duty of the Commissioner to withhold or recover funds by reason of the failure of the grantee to observe any of the requirements of the Act.

§ 118.27 Extent of participation under Title III of the Act.

(a) *Prior activities and services basis.* Participation under Title III of the Act in supplementary educational centers and services will be provided only to the extent that the services and activities provided for in the project proposal are of a type not carried on during the base period in the area served, or that they supplement the quantity or improve the quality of services and activities of the same type carried on during the base period in the geographical area served.

(b) *Monetary basis.* Where a local educational agency has, during the base period, been carrying on activities and services of the type proposed with funds derived from State and local public sources, the degree of Federal financial participation will be determined by the Commissioner taking into account the proposed continued expenditures for services and activities of the type proposed as compared with expenditures for similar activities and services during the base period.

§ 118.28 Availability of funds for approved projects.

The issuance of a grant award document will be regarded as an obligation of the Government of the United States in the amount of the grant award. Federal appropriations so obligated will remain available for expenditure by such local educational agencies during the period for which the grant was awarded. For purposes of the regulations in this part, funds shall be considered to have been expended by a local educational agency on the basis of documentary evidence of binding commitments for the acquisition of goods or property, for the construction of school facilities, or for the performance of work, except that funds for personal services, for services performed by public utilities, for travel, and for the rental of facilities shall be considered to have been expended respectively as of the time such services were rendered, such travel was performed, and such rented facilities were used. Such binding commitments for the acquisition of goods or property, for the construction of school facilities or for the performance of work, shall be liquidated within a reasonable period of time.

§ 118.29 Fiscal and auditing procedures.

(a) *Custody of funds.* Each project proposal shall designate the officer who will receive and have custody of project funds.

(b) *Fiscal procedures.* Each grantee receiving Federal funds for an approved project shall provide for such fiscal control and fund accounting procedures as are necessary to assure proper disbursement of, and accounting for, the Federal funds paid to it. Accounts and supporting documents relating to project expenditures shall be adequate to permit an accurate and expeditious audit.

(c) *Auditing procedures.* Each grantee shall make appropriate provision for the auditing of project expenditure records, and such records as well as the audit reports shall be available to auditors of the Federal Government.

§ 118.30 Adjustments.

Each grantee shall, in maintaining program expenditure accounts, records, and reports, make any necessary adjustments to reflect refunds, credits, underpayments, or overpayments, as well as any adjustments resulting from Federal or local administrative reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Commissioner.

§ 118.31 Disposal of records.

(a) *General rule.* Subject to the provisions of paragraph (e) of § 118.40, each grantee shall provide for keeping accessible and intact all records pertaining to such Federal grants or relating to the expenditure of such grants (1) for 3 years after the close of the fiscal year in which the expenditure was liquidated, (2) until the grantee is notified that such records are not needed for program administrative review, or (3) until the grantee is notified of the completion of the Federal fiscal audit, whichever is the latest.

(b) *Questioned expenditures.* The records pertaining to any claim or expenditure which has been questioned at the time of audit shall be maintained until necessary adjustments have been reviewed and cleared by the Department of Health, Education, and Welfare.

§ 118.32 Cooperative agreements.

An applicant may enter into a cooperative agreement or contract to provide services under a project if the services to be so provided, as well as the cooperating institution, organization, or agency, are specified in the project proposal and if the agreement or contract is acceptable to the Commissioner. Such a cooperative agreement or contract will be acceptable only if the Commissioner is assured that the applicant will retain the responsibility for supervision of the project.

§ 118.33 Eligible expenditures.

Expenditures which are eligible for participation under Title III of the Act are those expenditures which (a) conform to the terms of the approved project, (b) are incurred for activities which supplement instruction that had been provided during the base period for public and nonprofit private school students and teachers, and (c) are clearly identifiable as additional expenditures incurred as a result of the Title III program.

§ 118.34 Funds not expended.

In the event that funds previously made available under Title III of the Act have not been expended pursuant to the approved project and, in the judgment of the Commissioner, will not be expended for such purposes, the Commissioner may, upon notice to the recipient, reduce the amount of the grant or payment to an amount consistent with the recipient's needs. In the event that an excess over the sum needed for completion of the project shall have actually been paid to the recipient, the custodian of the project funds shall pay that excess over to the Commissioner.

§ 118.35 Reapportionment.

In order to provide a basis for reapportionment by the Commissioner under section 302(d) of the Act, each grantee thereunder shall submit to the Commissioner, by such date or dates as he may specify, a statement showing the anticipated need during the current fiscal year for the amount previously granted.

§§ 118.36–118.39 [Reserved]

Subpart E—Equipment and Construction

§ 118.40 Acquisition and maintenance of equipment.

(a) *Title to equipment.* Title to equipment acquired under Title III of the Act must be vested in, and retained by, a public agency, or in the case of the Department of the Interior or the Department of Defense, in the United States.

(b) *Use and control.* All equipment acquired under Title III of the Act must be used for the purposes specified in the approved project, and such equipment must be subject to the administrative control of the recipient public agency, or in the case of the Department of the Inte-

rior or the Department of Defense, the administrative control of the United States.

(c) *Maintenance and repair of equipment.* Costs of maintaining and repairing equipment purchased under grants pursuant to Title III of the Act shall be eligible for Federal financial participation during the life of the project. It shall be the responsibility of the grantee to make reasonable provision for the maintenance and repair of such equipment.

(d) *Built-in equipment.* The provisions of paragraphs (a), (b), and (c) of this section also apply to built-in equipment, which is defined to mean equipment that is permanently fastened to the building and functions as part of the building. The cost of such equipment is eligible for financial participation under Title III of the Act if a State or local educational agency or the U.S. Government owns or operates the facility to which such equipment is attached and retains such ownership, or there is reserved the right to remove such equipment.

(e) *Inventories of equipment.* Where equipment which costs $100 or more per item is purchased by the grantee under an approved project, inventories and other records supporting accountability shall be maintained until the grantee is notified of the completion of the Department's review and audit covering the disposition of such equipment. Such equipment may not be sold or exchanged for unlike equipment prior to the expiration of its useful life or the expiration of the project period and all extensions thereof, whichever occurs first.

§ 118.41 Grants for construction.

(a) *General provisions.* Where essential for the success of a project under Title III of the Act, funds made available thereunder may be used by local educational agencies for the acquisition, lease, remodeling, or construction of facilities if the estimated cost of such facilities is commensurate with the range and scope of the services to be provided under the proposed project.

(b) *Assurances.* Grants which make provision for construction shall contain assurances that:

(1) Reasonable provision has been made, consistent with other approved use to be made of the facilities, for areas in such facilities which are adaptable for artistic and cultural activities;

(2) Upon completion of the construction, title to the facilities will be in and retained by a State or local educational agency, and the building will be operated and used for the educational and related purposes for which it was constructed for a period of not less than 20 years;

(3) Construction approved pursuant to the project proposal will be undertaken promptly;

(4) Contracts for the construction approved pursuant to the project proposal will provide that all laborers and mechanics employed by contractors or subcontractors shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5), that such contractors and subcontractors will comply with the regulations in 29 CFR Part 3 (see 29 F.R. 97), and include all clauses required by 29 CFR 5.5 (a) and (c) (see 29 F.R. 100, 101, 13463, and 29 CFR Part 3, Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act—published at 29 F.R. 13465), and that the nondiscrimination in employment clause prescribed by Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319), will be incorporated in any contract for construction work or modification thereof as defined in said Executive order;

(5) Representatives of the U.S. Office of Education will have access at all reasonable times to work wherever it is in preparation or progress, and the contractor will provide proper facilities for such access and inspection;

(6) The final working drawings and specifications will be submitted to the Commissioner before the construction approved pursuant to the project is placed on the market for bidding;

(7) Construction work will be contracted for, and performed, according to State and local rules and regulations;

(8) The grantee will furnish progress reports and such other information relating to the proposed construction and the grant as the Commissioner may require;

(9) Architectural or engineering supervision and inspection will be provided at the construction site to insure that the completed work conforms to the approved plans and specifications;

(10) In developing the plans for the construction the grantee has given due consideration to excellence of the architecture and design and to the inclusion of works of art, for which funds under Title III of the Act will be available not in excess of 1 percent of the cost of the project;

(11) In planning the construction of school facilities each grantee shall, in accordance with the provisions of Executive Order No. 11296 of August 10, 1966 (31 F.R. 10663) and such rules and regulations as may be issued by the Department of Health, Education, and Welfare to carry out those provisions, evaluate flood hazards in connection with such school facilities and, as far as practicable, avoid the uneconomic, hazardous, or unnecessary use of flood plains in connection with such construction;

(12) In developing plans for school facilities, provision shall be made in order to insure that such facilities shall be, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by handicapped persons and in developing such plans there will be compliance with the minimum standards contained in "American Standard Specifications for Making Buildings and Facilities Accessible To and Useable By, the Physically Handicapped" approved by the American Standards Association, Inc., October 31, 1961, with appropriate useable segments of "Building Standards of the University of Illinois Rehabilitation Center" and "Occupancy Guide Requirement of Veterans Benefits, Regional Offices, Veterans Administration", and with such other standards as the Secretary may prescribe or approve; and

(13) The applicant has or will have a fee simple or such other estate or interest in the site, including access thereto, as is sufficient in the opinion of the Commissioner to assure undisturbed use and possession of the facilities for not less than 20 years from the date of the completion of the construction approved pursuant to the project.

(c) *Manner of construction.* Construction must be functional, must be undertaken in an economical manner, and must not be elaborate in design or extravagant in the use of materials in comparison with school facilities of a similar type constructed in the State within recent years.

(d) *Contracts for construction.* All contracts for construction (as defined in § 118.1) shall be awarded to the lowest qualified bidder on the basis of open competitive bidding; except that, if one or more items of construction are covered by an established alternative procedure, consistent with State and local laws and regulations, which is approved by the State agency as designed to assure construction in an economical manner consistent with sound business practice, such alternative procedure may be followed.

§ 118.42 Accounting procedures for construction projects.

Funds made available for construction pursuant to a grant under Title III of the Act must be expended within 12 months from the effective date of the project, except that a longer period may be allowed by the Commissioner upon a showing of good cause.

§ 118.43 Recovery of payments.

If within 20 years after the completion of any construction undertaken pursuant to a grant under Title III of the Act (a) the owner of the facility shall cease to be a State or local educational agency, or (b) the facility shall cease to be used for educational and related purposes for which it was constructed, recovery of payments may be had in accordance with the procedures set forth in section 307 of the Act.

§ 118.44 Leasing facilities.

In the case of a grant to lease a facility the grantee shall have the right to occupy; and to operate, and if necessary to maintain and improve, the premises to be leased during the proposed period of the project.

§ 118.45 Shared use of supplementary educational centers.

Any project to be carried out in supplementary educational centers and involving joint participation by children enrolled in private schools and children enrolled in public schools shall include such provisions as are necessary to avoid the separation of participating children by school enrollment or religious affiliation.

§ 118.46 Patents and copyrights.

(a) Any material of a copyrightable nature produced through a project with financial assistance under Title III of the Act shall not be copyrighted but shall be placed in the public domain.

(b) Any materials of a patentable nature produced through a project with financial assistance under Title III of the Act shall be subject to the provisions of 45 CFR Parts 6 and 8 which are hereby incorporated into the terms and conditions of any approved project.

§§ 118.47–118.48 [Reserved]

Subpart F—Review Provisions

§ 118.49 State educational agency review and recommendations.

In order to afford State educational agencies a reasonable opportunity to review and recommend project proposals submitted within a State, the Commissioner will not take final action with regard to any project proposal, nor will the Advisory Committee on Supplementary Educational Centers and Services make its final review of any project proposal, until 30 days after the applicable deadline date established by the Commissioner for the filing of project proposals by local educational agencies.

§ 118.50 Continuing administrative review and program evaluation.

By the U.S. Office of Education. In order to assist the recipient of funds under Title III of the Act in adhering to statutory and regulatory provisions and to the substantive legal and administrative requirements, the Commissioner will conduct periodic program reviews and evaluations.

Dated: January 25, 1967.

[SEAL] HAROLD HOWE II,
U.S. Commissioner of Education.

Approved: February 2, 1967.

JOHN W. GARDNER,
Secretary of Health, Education, and Welfare.

[F.R. Doc. 67–1464; Filed, Feb. 8, 1967; 8:45 a.m.]

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